

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.2703 OF 2007
IN
SUIT NO.2018 OF 2007**

Madhusudan Leasing & Finance Ltd. & Anr.Plaintiffs

V/s.

M/s. Lodha C.H.S. Ltd. & Ors.Defendants

Mr. A.N. Narula i/b. M/s. Jhangiani Narula & Associates for the plaintiffs.

Mr. N.N. Bhadrashete for the defendant nos.16 to 21.

Ms. Deepti Panda i/b. Narayanan & Narayanan for the defendant no.23.

CORAM : K.R.SHRIRAM,J

DATE : 28th JULY, 2016

P.C.:-

1 This court had by an order dated 27th July, 2007 held that the suit property deserves to be preserved and the plaintiffs were entitled to ad-interim relief in terms of prayer clause (b) till the hearing of the notice of motion. The defendant no.1 society was also directed not to allow or grant any transfer request at the instance of defendant nos.2 to 21 till the hearing of the notice of motion as ad-interim in terms of prayer clause (b) will require the defendant no.1 society to observe that position. The motion was directed to be placed for hearing on 10th September, 2007.

2 We are today on 28th July, 2016. Nine years have lapsed between the ad-interim order and today. The 10th year has technically began today. In the meanwhile, by an order dated 23rd February, 2016 the chamber summons taken out by the plaintiff for leave to amend the plaint or in the alternative permission to withdraw the suit against defendant no.1 with liberty to file a suit on the same cause of action by joining defendant no.1 back in the suit with permission to amend the plaint as per the Schedule came to be heard and disposed.

3 On 23rd February, 2016 the court was pleased to allow the chamber summons by recording the consent of the counsel appearing for the defendant nos.16 to 21 and defendant no.23 to the alternate prayer clause (b) being granted, subject to their contentions on merits of the case including the question of limitation being kept open. The chamber summons was made absolute in terms of prayer clause (b) of the chamber summons, subject to the contentions of all parties on merits including the issue of limitation being kept open, which can be decided at the time of trial.

4 The counsel for the defendant no.23 states that after the chamber summons was allowed they filed a further affidavit dated 21st March, 2016 in which they have raised the issue of limitation and

prayed for deciding that as a preliminary issue under Section 9A of the Code of Civil Procedure.

5 While disposing of the chamber summons, this court had kept the issue of limitation open to be decided at the time of trial. The issue of limitation involves mixed question of law and facts. This is a suit of the year 2007. The plaintiffs have enjoyed the ad-interim order for more than 9 years and the defendants have chosen to suffer the order for more than 9 years.

6 Mr. Narula, counsel for the plaintiffs states that most of the defendants have filed their written statement but defendant no.23 has not filed any written statement. Since the evidence is required to be led on the issue of limitation also, it would serve nobody's interest if the evidence is led only on the issue of limitation and keep the matter pending for few more years. It would be in the interest of all the parties if the suit proceeds to trial at the earliest.

7 Therefore, taking into consideration the situation, I am inclined to confirm the ad-interim order passed on 27th July, 2007 as order in the notice of motion. The issue of limitation will be decided alongwith all the other issues.

8 The notice of motion accordingly stands disposed.

9 The defendant no.23 and other defendants, who have not
filed written statement to file written statement and serve a copy
thereof within two weeks from today.

10 Within one week thereafter, parties to file their respective
affidavit of documents and also complete discovery and inspection.
Within one week thereafter, parties to file and exchange their
statement of admission and denial with reasons for denial.

11 The suit be listed for issues on 29th August, 2016.

(K.R.SHRIRAM,J)