

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

**NOTICE OF MOTION NO.3019 OF 2008  
WITH  
NOTICE OF MOTION NO.500 OF 2015  
IN  
SUIT NO.2254 OF 2008**

Mangilal Gulabchand Jain & Ors. ....Applicants/Plaintiffs

V/s.

Kola Bhaskar Naidu & Ors. ....Defendants

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Mr. Shriram Kulkarni for the applicants/plaintiffs.

Mr. Amey Deshpande for the defendant nos.1 and 2.

Mr. Pradip R. Kadam for the defendant no.3.

Mr. M.S. Lad for the defendant nos.4 to 8.

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**CORAM : K.R.SHRIRAM,J**

**DATE : 9<sup>th</sup> JUNE, 2016**

**P.C.:-**

1           At the outset, the counsel for the applicants/plaintiffs seeks leave to amend the prayer in notice of motion no.500 of 2015. Leave granted. The amendment to be carried out forthwith.

2           Mr. Kulkarni, counsel appearing for the plaintiffs states that keeping open the directions passed by this court on 1<sup>st</sup> December, 2008 the notice of motion no.3019 of 2008 can be disposed of with liberty for the plaintiffs to take out a fresh application, should the need arise.

3           In view of the notice of motion no.3019 of 2008, the defendant no.3 had filed a notice of motion bearing no.1074 of 2012 for framing issue of limitation under section 9(A) of the Code of Civil Procedure. The said notice of motion was disposed of by an order dated 5<sup>th</sup> March, 2013 by framing the issue on limitation. The plaintiffs wanted to lead evidence and therefore, the Commissioner was appointed to record evidence on the issue of limitation. The recording of evidence is not yet concluded.

4           The plaintiffs have also taken out a notice of motion no.500 of 2015 for recalling the order dated 5<sup>th</sup> March, 2013. The counsel for the defendants suggests that in view of the suggestions made by the counsel for the plaintiffs as mentioned in paragraph 2 above, both the pending notices of motion can be disposed of with the liberty as sought by the plaintiffs.

5           The notice of motion no.3019 of 2008 is disposed with the liberty as sought. It is made clear that whatever orders have been passed in the notice of motion shall continue until the disposal of the suit.

6           In view of the above, the counsel for the plaintiffs seeks leave to withdraw the notice of motion no.500 of 2015. Leave granted. The notice of motion no.500 of 2015 is disposed as withdrawn.

7           The Commissioner, who was appointed to record evidence on the issue of limitation also stands discharged. The counsel for the opposing parties agree to pay the fees and expenses of the Commissioner, whatever it may be, within two weeks from the date of the Commissioner raising an invoice.

8           The counsel for the defendant no.3 states that they will file the written statement within one week from today. Whichever defendant has not filed the written statement shall also file their respective written statement on or before 18<sup>th</sup> June, 2016. On or before 30<sup>th</sup> June, 2016 all parties to file their respective affidavit of documents and serve a copy thereof upon the other side. On or before 8<sup>th</sup> July, 2016 parties to give inspection of their documents to the other side. On or before 15<sup>th</sup> July, 2016 parties to file and exchange their statement of admission and denial with reasons for denial.

9 Stand over to 18<sup>th</sup> July, 2016 for issues. Since this is a suit of the year 2008, parties are directed to strictly and meticulously follow the time table given above and parties are also put to notice that they will be put to terms if they fail in complying with the directions given above.

10 It is clarified that the issue of limitation will be the first issue to be framed. It is also clarified that whatever documents filed by the plaintiffs which have been received in evidence for the purpose of section 9(A), need not be exhibited again.

**(K.R.SHRIRAM,J)**