

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 4016 OF 2007
IN
SUIT NO. 2975 OF 2007**

Nitesh P. Kothari

.. Plaintiff

Vs.

John Braganza & Ors.

.. Defendants

Mr.P.J. Thorat a/w. Ms.Pratibha Shelke for plaintiff.

Mr.Anil D'souza for defendant nos.1A, 1B & 1C.

CORAM : K.R.SHRIRAM, J.

DATE : 21ST JULY, 2016

P.C.

1 The counsel for the plaintiff states that by an order dated 29th November 2007, the Court was pleased to grant ad-interim relief injuncting/restraining the defendants from creating any third party rights or carry out any construction on the suit premises. The said order has been in force for almost nine years. The counsel for defendant Nos.1A, 1B and 1C submits that he had taken out an application under Section 9A of the Code of Civil Procedure, 1908 on the issue of limitation and this Court decided the preliminary issue of limitation in favour of the plaintiff by an order pronounced on 29th April 2016 read with order dated 4th May 2016. The counsel for the defendant 1A, 1B and 1C states that he has carried the matter in Appeal against this order.

2 The counsel for the plaintiff submits that since the defendants have

suffered this order for almost 9 years, the order be confirmed as order in this notice of motion. The counsel for defendant nos.1A, 1B and 1C, without prejudice to the rights and contentions, has no objection but submits that he should be allowed to pursue the Appeal and this consent should not be deemed to be waiver of the defendants' right to prosecute their Appeal. The counsel also submits that if he succeeds in the Appeal, then this order should be reversed.

3 It is clarified that disposing of this notice of motion will not come in the way of the defendants' prosecuting their Appeal. At the same time, if the defendants succeed in the Appeal, the suit itself will get dismissed and therefore, the question of reversing the situation does not arise.

4 Defendant no.1 died some time ago and defendant nos.1A to 1C are the legal heirs of defendant no.1 and the ad-interim order passed, shall continue to operate against the legal heirs as well.

5 In view of above, the ad-interim order passed on 29th November 2007 is confirmed as the order in the notice of motion and the notice of motion stands disposed.

6 The suit to come up in due course.

(K.R. SHRIRAM, J.)