

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

**NOTICE OF MOTION NO. 365 OF 2011
WITH
NOTICE OF MOTION NO. 932 OF 2011
IN
SUIT NO. 982 OF 2008**

Jatin Manubhai Sheth

... Plaintiff

Versus

Arvind Pandurang Nagvekar & Ors..

... Defendants

None for plaintiff in NMS/365/2011.

Mr.Pradeep J. Thorat for defendant nos.2 and 3 and for applicant in NMS/932/2011.

CORAM : K.R.SHRIRAM, J.

DATE : 24TH JULY, 2017

P.C.

1 None for applicant. I have considered the reliefs sought, which in my view, cannot be granted at the interim stage.

2 Mr.Thorat appearing for defendant nos.2 and 3 states that pursuant to a decree passed by the Small Causes Court, Mumbai, defendant nos.2 and 3 have taken possession from Brihan-Mumbai Municipal Corporation and therefore, nothing remains in the notice of motion.

3 Notice of motion dismissed.

NOTICE OF MOTION NO. 932 OF 2011

4 This notice of motion is taken out for recalling an ex-parte order dated 23rd December 2010 passed by this Court in this suit thereby taking on record the consent terms filed between plaintiff and defendant nos.1, 4 to 9 whereby a partial decree in terms of consent terms was passed.

5 Admittedly, the Memorandum of Understanding dated 17th March 2005 (MOU) is between plaintiff and defendant nos.1, 2 and 3 and defendant nos.4 to 9 are not even party to the MOU. The suit is for specific performance of the MOU. Mr.Thorat states that originally the suit was filed against defendant Nos.1, 2, 3 and 5 and defendant nos.4 to 9 were added subsequently by plaintiff by taking out two chamber summons bearing Nos.737 of 2010 and 1487 of 2010, respectively. These two chamber summons were taken out by defendant nos.4 to 9 and both chamber summons came to be allowed with the consent of the plaintiff vide order dated 27th August 2010 and 23rd December 2010. In paragraph 13 of the affidavit in support, it is stated by applicant that without notice to them, plaintiff/applicant therein got the papers produced before the Learned Single Judge and obtained the order dated 27 August 2010 whereby defendant nos. 7 and 8 got added as defendants to the suit. It is also stated that defendant

nos.2 and 3 had filed reply opposing the chamber summons. Though in paragraph 6, the plaintiff has denied that the matter was produced behind back of defendant nos.2 and 3, it is not stated that the matter was listed on board that day and defendant nos.2 and 3 though served chose to remain absent. If one looks at the order dated 27th August 2010, the appearance of defendant nos.2 and 3 is not noted. Similarly, in the order dated 23rd December 2010. Therefore, even for a moment, if we proceed on the basis that it was open for the plaintiff to amicably resolve his disputes with defendant nos.1 and 4 to 9, certainly defendant nos.2 and 3 should have been put to notice.

6 In the circumstances, I am inclined to and hereby recall the order dated 23rd December 2010.

7 Notice of motion accordingly stands disposed.

(K.R. SHRIRAM, J.)