

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

NOTICE OF MOTION NO.820 OF 2014

IN

SUIT NO.696 OF 2014

Afzalbee Janmohammed Jusab and Ors.Applicants/Plaintiffs

Vs.

M/s. M.J. Builders and Ors.Defendants

Mr. R.P. Hake-Patil i/b. Mr. A.S. Deshmukh for applicants/plaintiffs.

Mr. Sharan Jagtiani a/w. Ms. Neeta Solanki i/b. Kiran Jain and Co. for defendant no.1.

CORAM : K.R.SHRIRAM, J.

DATE : 3rd AUGUST, 2017

PC.:

1 The prayers (a) to (f) in the notice of motion are identical to prayers (a) to (f) in the suit. The Courts do not grant a final relief at the interim stage. Ofcourse, there are some exceptions where plaintiff is able to show more than strong prima facie case when the Court may consider and exercise its discretion for a mandatory injunction at the interim stage. The facts and circumstances of the present case does not disclose any such strong prima facie case.

2 Therefore, the notice of motion is not maintainable. The notice of motion stands dismissed.

3 Mr. Jagtiani, counsel for defendant no.1, on instructions states that written statement has been filed by defendant no.1. The suit is of the year 2014. Right from the beginning only defendant no.1 has been

appearing. On 9th October, 2015, the Court has noted that defendant no.2 has expired and the summons was directed to be served on defendant no.3, who is the daughter of defendant no.2.

4 Today, the counsel appearing for plaintiff is unable to assist the Court because the Advocate on record is not available.

5 Therefore, if the writ of summons has been served on defendant nos.3,4 and 5, the suit to be transferred to the list of undefended suits as against defendant nos.3,4 and 5. From the records and proceedings it appears that except defendant no.1 none of the other defendants have filed any written statement.

6 If writ of summons has not been served, the suit will stand dismissed against defendant nos.3,4 and 5 for want of prosecution without further reference to this Court.

7 On the next date, if it is the case of plaintiff that writ of summons has been served on defendant nos.3,4 and 5, plaintiff shall file an affidavit of service to that effect.

8 Suit be listed on 29th August, 2017 at 3.00 p.m. for issues at which time parties will come with agreed draft issues and a separate list of issues on which they are unable to agree.

(K.R. SHRIRAM, J.)