

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

NOTICE OF MOTION NO.607 OF 2014

IN

SUIT NO.2509 OF 2008

Suresh G. Kumar

....Applicant/Plaintiff

Vs.

M/s. Metro Development Corpn. & Anr.

....Defendants

Mr. Sanjay Jain a/w. Ms. Sarika Mehra i/b. L. J. Law for applicant/plaintiff.

Mr. V.S. Kapse for defendant no.1.

Mr. Mayur Khandeparkar a/w. Mr. Harsh Behany i/b. Maniar Srivastava and Associates for defendant no.2.

CORAM : K.R.SHRIRAM, J.

DATE : 20th JULY, 2017

PC.:

1 This notice of motion has been taken out by plaintiff by virtue of the amendment to the plaint.

2 Defendant no.2 has filed an affidavit in reply stating that the preliminary issue under Section 9A that the suit is barred by limitation be framed. I asked the counsel for defendant no.2 to make out a case why such an issue has to be framed because it should not be mechanical process that any defendant will make a statement that preliminary issue under Section 9A has to be framed and the court mechanically frames the issues. The counsel, therefore, briefly argued the matter and took the Court through the plaint as well as the affidavit in reply.

3 Earlier plaintiff had taken out a notice of motion which came
to be dismissed and that order was carried in appeal. The Appeal Court by
an order dated 18th June, 2010 upheld the dismissal of the notice of
motion.

4 The present notice of motion has been taken out only in view
of the amendment because the prayer sought in the plaint earlier was only
seeking declaration whereas the amendment was to seek a prayer for
specific performance as well.

5 Having heard the counsel, I see no reason why this notice of
motion should be entertained particularly, because no new case has been
made out.

6 Notice of motion accordingly stands dismissed. It is, however,
clarified that the issue of limitation is kept open to be decided at the trial of
the suit.

7 Mr. Khandeparkar, counsel for defendant no.2 seeks two weeks
time to file additional written statement. Time granted.

8 Suit be listed for issues on 22nd August, 2017.

(K.R. SHRIRAM, J.)