

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

**NOTICE OF MOTION No.1572 OF 2010
IN
SUIT No. 1502 OF 2010**

Sheth Construction Company	...Applicant/Plaintiff
Vs.	
Andheri P.M.G.P. Colony CHS.	
Association Ltd.	...Respondent

Mr. B.D. Shinde i/b. H.V. Kumarswami for Applicant/Plaintiff

Mr. Prashant G. Karande for Defendant

CORAM : K.R. SHRIRAM, J.

DATE : JULY 10, 2017

P.C. :

1. This notice of motion is taken out to restrain the Defendants from alienating, transferring and/or creating any third party interest in the suit property and to direct the Defendants by way of mandatory injunction to execute the “Development Agreement” with the Plaintiff and also to grant irrevocable power of attorney in favour of the Plaintiff.
2. The effect of prayer clause (b) for mandatory injunction is the main

relief in the suit and, therefore, the said relief cannot be granted at interim stage.

3. So far as the relief of restraining the Defendants from creating third party rights is concerned, it should be noted that on 7th May, 2010, the Plaintiff had pressed for ad-interim relief and it was recorded that the Advocate for the Plaintiff submitted that he will not press for ad-interim relief beyond vacation and the matter was adjourned to 18.6.2010 at 3.00 p.m. for ad-interim relief. The Plaintiff did not move for ad-interim relief on that date or later on. There is nothing on record to show that as to why the ad-interim relief has become necessary today. It also should be noted that the notice of motion and suit itself was dismissed for want of prosecution and restored after payment of costs of Rs.50,000/-.

4. In the circumstances, notice of motion is dismissed. The Defendants have filed their written statement. Suit be listed for framing of issues on 1st August, 2017. On the next date, the parties to come with the agreed draft and a separate list of issues on which they are unable to agree.

[K. R. SHRIRAM, J.]