

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

**NOTICE OF MOTION (L) NO. 413 OF 2017
IN
COMMERCIAL SUIT (L) NO. 359 OF 2017**

Rajal Enterprises	...Plaintiff/Applicant
vs.	
Shree Samruddhi Developers & Ors.	...Defendants

Mr.K.K. Holambe Patil and B.V.Holambe Patil for Plaintiff.
Mr.Sandesh Patil I/b. Pavan S. Patil for Defendants.

CORAM : S.C. GUPTE, J.

31 JULY 2017

P.C. :

Learned Counsel for the Defendants tenders a reply to the notice of motion. Learned Counsel for the Plaintiff tenders a rejoinder.

2 Heard learned Counsel for the parties.

3 This application is for ad-interim reliefs in the form of an interlocutory injunction restraining the Defendants from appointing any person as a contractor by removing the Plaintiff. The Plaintiff is appointed as contractor for construction of both rehabilitation and sale buildings in a slum rehabilitation project. It is an admitted position that a substantial portion of the work has already been accomplished so far as rehabilitation building is concerned. Learned Counsel for the Plaintiff submits that some plinth work is also done in respect of the sale building. This position is contested by the Defendants. Learned Counsel for the Defendants submits

that the work, which is at site, as of date, insofar as the sale building is concerned, has actually been carried out by the developer of the sale building. Whereas no interim relief can really be granted towards specific performance of a construction contract, even if such contract be with materials, it is in the interest of justice that the Defendants are permitted to carry out further construction only after an appropriate joint measurement is carried out to ascertain the work carried out so far at the site.

4 In the premises, the notice of motion is disposed of, by consent of parties, by directing the Prothonotary & Senior Master of this court to appoint an Architect from the Panel of Architects maintained by the Court Receiver's office for survey and measurement of the work carried out in the rehab building as well as the work, if any, carried out as regards the sale building as of date. Such survey and measurement will be carried out in the presence of representatives of both the parties. A report of such survey and measurement to be furnished within three weeks from today. The Defendants will be entitled to proceed with the work of construction after this exercise is carried out. They will, however, give a notice of a week to the Plaintiff before carrying out such work, to enable the Plaintiff to respond to the Architect's report. No order as to costs.

(S.C. Gupte, J.)