

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

**NOTICE OF MOTION NO.1529 OF 2013
WITH
NOTICE OF MOTION NO.1102 OF 2015
IN
SUIT NO.847 OF 2013**

Rajesh Ramji Nandu and Anr.Plaintiffs

Vs.

Hanware Realty and Ors.Defendants

Mr. Arshil Shah for plaintiffs.

Mr. Omar Khaiyam Shaikh for defendant no.1.

Mr. Arvind Aswani i/b. Mr. Jagdish G. Aradwad for defendant no.5.

CORAM : K.R.SHRIRAM, J.

DATE : 31st AUGUST, 2017

PC.:

NOTICE OF MOTION NO.1102 OF 2015

1 This notice of motion is taken out on behalf of defendant nos.2 and 3 to set aside the order dated 17th July, 2014 passed by the Prothonotary and Senior Master directing the suit be transferred to the list of undefended suits and allowing defendant nos.2 and 3 to file their written statement.

2 Defendant no.3 is the Proprietor of defendant no.2 and in the affidavit in support has stated that she had family problems and was not in town when the Prothonotary and Senior Master passed the order dated 17th July, 2014.

3 Nobody is present for applicants today. This matter is being taken up without assistance from applicants or their Advocate.

4 In view of the reasons given in the affidavit in support and since the suit itself is still pending and even issues are yet to be framed so far as other defendants are concerned, I am inclined to grant time upto 8th September, 2017 to defendant nos.2 and 3 to file written statement unless it is already filed in the registry and serve a copy thereof. Mr. Shah, counsel for plaintiffs states that he has not atleast received a copy of the written statement and I do not find any written statement of defendant nos.2 and 3 on record. There is no office endorsement either.

5 It is made clear that if the written statement is not already filed or the written statement is not filed by 8th September, 2017, defendant nos.2 and 3 will not be given any further time to file written statement and the suit will proceed as undefended suit against defendant nos.2 and 3.

6 Notice of motion accordingly stands disposed.

NOTICE OF MOTION NO.1529 OF 2013

1 This notice of motion is taken out by plaintiffs seeking an injunction to restrain primarily defendant no.1 from acting in any manner contrary to the Joint Development Agreement dated 5th May, 2008 that plaintiffs entered into with defendant nos.2 and 3.

2 Defendant no.2 which is a proprietary concern of defendant no.3 submitted a proposal for implementation of S.R. Scheme on 24th July, 2001 for rehabilitation of 177 slum dwellers. The SRA approved the scheme and granted LOI on 25th November, 2005 and CC was issued in the year 2007. Thereafter, the Slum Dweller's Society passed General Body Resolutions dated 7th August, 2011 and 11th September, 2011 for change of developer of the subject S.R. Scheme on the ground that the earlier developer - defendant nos.2/3 could not complete the rehab portion due to financial constraint. Thereafter, a final report was submitted to the Officer on Special Duty, Dharavi Redevelopment Project wherein the Officer on Special Duty passed an order directing SRA to stop work by issuing stop work notice to defendant nos.2/3. The stop work notice was challenged by defendant nos.2/3 before the High Power Committee and the High Power Committee was pleased to dismiss the same as withdrawn.

3 Thereafter, the General Body Meeting was held in the presence of the representative of Slum Rehabilitation Authority on 15th August, 2012 in which defendant nos.2/3 stated that due to financial constraints defendant nos.2/3 will not be able to complete the project. Based on that, no objection was given by defendant nos.2/3 in favour of society for appointment of new developer and the society appointed defendant no.1 as a new developer.

4 It is the case of plaintiffs that in between, by a Joint Development Agreement dated 5th May, 2008 entered into between plaintiffs and defendant nos.2 and 3, plaintiffs were co-opted as joint developer and as per that agreement, plaintiffs were to get 60% of the developed premises and the balance 40% was to go to defendant nos.2 and 3. The counsel for plaintiffs states that an intimation was sent to the SRA about this Joint Development Agreement but the SRA did not accept or ratify this arrangement between plaintiffs and defendant nos.2 and 3. It is stated that defendant no.4 was also a party to the said agreement.

5 Since the SRA has not accepted this agreement between plaintiffs and defendant nos.2 and 3 and even the society has not accepted this agreement, whether plaintiffs are entitled to any relief or not itself will be the subject matter of trial. In view thereof, the question of plaintiffs getting any relief in this notice of motion also does not arise.

6 The counsel for plaintiffs states that plaintiffs have made written representations to SRA to consider their case and for their rights to be protected. That the SRA may consider plaintiffs' representations on its own merits. This Court is not making any observations or comment regarding the representations to SRA.

7 Notice of motion accordingly stands dismissed.

(K.R. SHRIRAM, J.)