

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

**NOTICE OF MOTION (L) NO.257 OF 2017
IN
SUIT NO.352 OF 2017
WITH
NOTICE OF MOTION (L) NO.1543 OF 2017
(NOT ON BOARD)**

M/s J.D. Infrabuild (India) Pvt. Ltd. ... Applicant

In the matter of :

M/s J.D. Infrabuild (India) Pvt. Ltd. ... Plaintiff

Versus

Servant of India Society And Others ... Defendants

.....

Shilpan Gaonkar a/w Rajiv Hingu i/b L.H. Hingu And Company for the
Applicant/Plaintiff.

Mr. Mayur Khandeparkar i/b Omar Khaiyam Shaikh for the Respondents.

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CORAM : S.C.GUPTE, J.

DATE : 2 AUGUST 2017

P.C. :

. There is a companion notice of motion, bearing Notice of Motion (L) No.1543 of 2017, which is not on board. This motion is taken out by the Defendant under Order 7 Rule 11 of the Civil Procedure Code, 1908 ("Code"), for rejection of the plaint on the ground that the suit is barred by the Law of Limitation. By consent of parties, this Motion is mentioned and called out and heard with Notice of Motion (L) No.257 of 2017.

2 Notice of Motion (L) No.257 of 2017 is pressed for an ad-interim relief restraining the defendant trust from creating any third party rights in respect of the suit property. Learned Counsel for the defendant trust, on instructions of his client, states that the defendant trust shall not create any third party rights in respect of the suit property without obtaining leave of this Court. Considering the defence raised by the defendant trust, concerning the bar of limitation, which forms the subject matter of the Notice of Motion taken out by it under Order 7 Rule 11 of the Code, the following preliminary issue is framed under Section 9A of the Code :

“Whether the Suit is barred by the Law of Limitation ?”

3 In view of the preliminary issue framed today in the present Notice of Motion, learned Counsel for the defendant trust does not press his Notice of Motion under Order 7 Rule 11 of Code. Accordingly, Notice of Motion (L) No.1543 of 2017 is dismissed as not pressed. All contentions in this Notice of Motion are kept open to both the parties, to be agitated at the hearing of the preliminary issue framed as above.

4 Notice of Motion (L) No.257 of 2017 is adjourned to the hearing of the Suit on the preliminary issue.

(S.C. GUPTE, J.)