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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 714 OF 2017
IN
SUIT NO. 4559 OF 1995
WITH
NOTICE OF MOTION NO. 754 OF 2017**

Sunder Ghamanmal Golani	...Plaintiff
<i>Versus</i>	
Adhiraj Valabhdas Sanghvi & Anr	...Defendants

Mr Mohit Arora, with Pinky Patel & Sahil H, i/b Desai & Diwanji,
for the Plaintiff.
Mr VR Walawalkar, i/b SR Bhalekar, for Defendant No. 2.

CORAM: G.S. PATEL, J
DATED: 31st July 2018

PC:-

Notice of Motion No. 714 of 2017:

1. The Notice of Motion is not maintainable in view of Rules 89 and 90 of the Bombay High Court (Original Side) Rules.

2. The Notice of Motion is dismissed as withdrawn with liberty to file a fresh Notice of Motion in an appropriate form and for suitable reliefs.

Notice of Motion No. 754 of 2017:

3. The Notice of Motion seeks a decree on admission. The Suit is for specific performance of an agreement dated 18th September 1984. It is claimed that the Plaintiff is entitled to a physical structure or shed admeasuring about 2,300 sq ft (but not the land under it). This is situated at and is part of a larger property at Village Mulgaon, Taluka Andheri. The Affidavit in Support of the present Notice of Motion references the written statement filed by the 2nd Defendant, a purchaser or transferee of the larger property from the 1st Defendant. The agreement in question was with the 1st Defendant.

4. The 2nd Defendant has in paragraph 19 said that it obtained a conveyance of the entire property except the shed of 2,300 sq ft. This is by no means an admission on its own that the agreement in question and of which specific performance is sought is binding on the 2nd Defendant. All that this says is that when the 2nd Defendant took title from the 1st Defendant, it did not take title to the actual shed of 2,300 sq ft.

5. There is no reference in the Affidavit in Support of the Notice of Motion to any other portion of the 2nd Defendant's written statement. There is an attempt to argue that having regard to the

averments in paragraph 14 of the 2nd Defendant's written statement read with some annexures to it, I must hold that there is an entitlement to a judgment on admission. I cannot do so. There is no clear admission of the nature required by Order XII Rule 6 of the Code of Civil Procedure 1908.

6. Then there is an attempt to reference paragraph 24 of the 2nd Defendant's written statement. In this paragraph, the 2nd Defendant has said that the 1st Defendant committed breach of the sale agreement dated 18th September 1984. The 2nd Defendant says that the sale agreement is binding on the 1st Defendant. This can hardly constitute an admission that can be held against the 1st Defendant. I do not see how a statement made by the 2nd Defendant can be used in this fashion to obtain a judgment against the 1st Defendant.

7. The Notice of Motion is without substance. It is dismissed.

8. All contentions are left open to the trial of the Suit.

(G. S. PATEL, J)