

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 313 OF 2017
WITH
NOTICE OF MOTION (L) NO. 811 OF 2019
IN
SUIT NO. 84 OF 2017**

Nitesh Tejraj Jain

...Plaintiff

Vs.

Messrs. Sai Sadguru Developers & Ors.

...Defendants

Dr. Birendra Saraf a/w Ms. Deepti Panda, Mr. Ramchandran Narayan and Mr. Tejjas Shah I/b Narayanan and Narayanan for Plaintiff.

Mr. Cyrus Ardeshir a/w Mr. Dhaval Mehta I/b D.M. Legal for Defendant Nos. 1, 4 and 5.

Mr. P.B. Joshi I/b Bipin Joshi for Defendant No. 2.

Mr. Kal Tamboly a/w Sneha Vani-Marjadi I/b Arshil Shah for Defendant No.3.

CORAM : K.R.SHRIRAM, J.

DATE : 9th APRIL 2019

P.C.:

CHEMBER SUMMONS NO. 430 OF 2019

- 1 Not on board. By consent of the parties is taken up for hearing.
- 2 Mr. Ardeshir, Mr. Tamboly and Mr. Joshi for defendants state that the relief as prayed for in the chamber summons could be granted without prejudice to the rights and contentions of defendants.
- 3 Keeping open the rights and contentions of defendants to be raised in the additional written statement to be filed, chamber summons is allowed and accordingly disposed in terms of prayer clause (a) except the

bracketed portion Prayer (a) as granted which reads as under:

*“(a) that the Plaintiff be permitted to amend the Complaint and the proceedings herein as per the **SCHEDULE** annexed hereto.*

Plaint to be amended and copy of the amended plaint to be served within 2 weeks from today.

4 Additional written statement to be filed and copy served by 15.06.2019.

5 Paragraph no. 4 of order dated 06.02.2019 reads as under :

“Purely by way of indulgence, time to file written statement is granted upto and including 20.02.2019. For not complying with court's directions, each of the defendants shall give donation of Rs. 25,000/- to 'The Free Ophthalmic Hospitals Society', S.B. Account No. 011710005364, IFSC Code : BKDN0450117, Dena Bank, Parel, Mumbai – 400 012, and this amount to be paid on or before 18.02.2019. Each of the defendants in addition, shall also pay sum of Rs. 5,000/- as costs to plaintiff's Advocate and this amount shall also paid on or before 18.02.2019.”

I have to note that defendant no. 2 had refused to comply with this order dated 06.02.2019. Suit against defendant no. 2 has already been directed to be proceeded with as undefended suit in the order dated 13.03.2019.

6 Defendant no. 2 has not made any payment and in fact this court was informed on 13.03.2019, though not recorded, that defendant no. 2 shall not make the payment as directed by this Court. Mr. Joshi also

agrees. Even today Mr. Joshi states that his instruction are not to pay the amount. Therefore, the question of permitting defendant no. 2 to file his additional written statement also does not arise because on 13.03.2019 the suit as against defendant no. 2 has been directed to be proceeded as undefended suit.

7 Mr. Joshi states that he will persuade his client to comply with the orders of this court. I will give Mr. Joshi one last chance. The amount as directed by this court is to be paid and proof of such payment to be furnished to the Prothonotary and Senior Master, High Court, Bombay under advice to plaintiff's advocate. The time period cannot be kept open indefinitely. This liberty is given only for a period of 7 days from today, failing which this liberty shall stand revoked. Upon such payment, registry to accept the written statement and additional written statement of defendant no. 2.

(K.R. SHRIRAM, J.)