

**IN THE BOMBAY CITY CIVIL COURT AT BOMBAY**  
**NOTICE OF MOTION NO.711 OF 2014**  
**IN**  
**SUIT NO.8206 OF 1984**  
**HIGH COURT SUIT NO.514 OF 1984**

Aderbad CHS Ltd & Ors .....Plaintiffs

**V/s.**

Dinshaw Mehta & Ors .....Defendants

**Coram : His Honour Judge**

**Shri S.R.Jagtap**

**CR No.: 5**

Adv.Shri.Bhatia for the plaintiffs.

Adv.Ms.Veena for defendant nos.1 to 7

Adv.Shri. Gandhi for the defendant nos. 8 to 10

**ORAL ORDER**

**(Dated February 28<sup>th</sup>,2014)**

1. By this notice of motion, the defendant nos. 8 to 10 have prayed to set aside the order dated 13.02.2014 passed by this Court closing the evidence of defendant on the grounds set out in the affidavit filed in support of notice of motion.

2. The plaintiff has filed affidavit in reply to the motion and

....2/-

has stiff opposition to the motion on the grounds enumerated in the affidavit.

3. I have heard the learned advocate Adv.Shri.Bhatia for the plaintiffs , learned advocate Ms.Veena for defendant nos.1 to 7 and learned advocate Shri. Gandhi for the defendant nos. 8 to 10

4. Considering the submissions advanced by the learned advocates appearing for the respective parties , following points arise for my determination and I have recorded my findings thereupon for the reasons to be followed.

<b>Points</b>	<b>Findings</b>
1.Whether order dated 13.02.2014 is required to be set aside.?	....In the affirmative.
2.What order?	.... As per final order.

### **REASONS**

5. A perusal of additional affidavit filed in support of motion would show that the defendant nos.8 to 10 were unaware of transfer of this suit to C.R.No.14 and therefore, they did not appear before C.R.No.14. The defendant nos.8 to 10 further claim that when they received letter from Court Commissioner they came to know that the suit is transferred to this Court and their evidence is closed. Per contra, the plaintiff claims

that the defendant nos.8 to 10 were well aware of transfer of this suit from Hon'ble High Court to this Court,therefore, grounds put forth by the defendant nos.8 to 10 are not reasonable one. No doubt, the defendant nos. 8 to 10 might have knowledge about the transfer of suit from Hon'ble High Court to this Court and it was expected of defendant nos.8 to 10 to pursue the proceeding, but at the same time it cannot be ignored that cause list does not disclose the name of advocate of defendant nos. 8 to 10. Therefore, considering the grounds put forth by the defendant nos.8 to 10 and in order to give fair and reasonable opportunity, I am of opinion that, there is no impediment in setting aside the order dated 13.02.2014 closing the evidence of defendant nos.8 to 10. I, therefore, answered point Nos.1 and 2 accordingly. Consequently, I proceed to pass following order.

**ORDER**

1. Notice of motion No.711/2014 is allowed.
2. The defendant nos.8 to 10 are permitted to lead evidence.

Date.28.02.2014

Date of Dictation : 28.02.2014  
Date of Transcription : 05.03.2014  
Date of signature :  
Date of delivery to C.C.S. :

**( S.R.Jagtap)**  
Judge,  
City Civil Court,  
Gr.Mumbai,