Before : Shri D.V. Sawant
Prothonotary & Senior Master
Date : 30th April, 2015

FOR WRITTEN STATEMENT :

16	S/281/2014 with NMS/932/2014 S/281/2014 with NMS/579/2015 S/281/2014	)	Ms. Nafisa Khandeparkar, Plaintiff No. 2 is present in-person, so also, Advocate for Plaintiffs i/b. Mustafa Kachwala. Mr. Rakesh Singh, Advocate for Defendant Nos. 1 to 4. P.C. : Advocate for Defendant Nos. 1 to 4 applies time to file written statement firstly on the ground that he has taken out Notice of Motion for deleting the name of Defendant No. 4 and on the another ground that Defendant Nos. 1 and 2 left Mumbai 15 days back and now are at abroad and expected back on 07.05.2015, which is vehemently objected by Advocate for Plaintiff on the ground that earlier on three occasions i.e on 01.09.2014, 15.12.2014 and 10.03.2015 time was sought to file written statement, which was granted by Conditional Orders by making it clear that if written statement is not filed, Suit against Defendants will be transferred to the list of Undefended Suits. Advocate for Plaintiffs further contends that as far as Notice of Motion is concerned, it appears that alleged Notice of Motion though taken out, not shown on board, so also, copy of said Notice of Motion is not served, therefore, there is no Notice of Motion even though it might have taken out. According to me, though Notice of Motion is taken out as contended by Advocate for Defendant Nos. 1 to 4, however, they are not barred to file written statement as contemplated under the provision of

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S/281/2014)
with)
NMS/579/2015)
S/281/2014)

Order VIII Rule 10 of Civil Procedure Code, 1908 in which plea is required to be taken with specific denial and allegations made in the plaint under provision of Order VIII Rule 5(ii) of Civil Procedure Code, 1908. Only if, there is Notice of Motion taken out under the provision of Section 9A or under the provision of Order VII Rule 11 of C.P.C., 1908, in that case, unless said applications are decided at first instance, Suit cannot be proceeded with. However, Notice of Motion under the aforesaid provisions of law is not taken out. Therefore, it is mandatory for Defendants to file written statement. Accordingly, in the interest of justice, time is granted to Defendant Nos. 1 to 4 to file written statement subject to payment of cost of Rs. 3,000/- which is condition precedent to be paid to the Plaintiffs within a week from today, failing Suit against Defendant Nos. 1 to 4 will be transferred to the list of Undefended Suits. If cost is paid, time is granted to Defendant Nos. 1 to 4 to file written statement till 16.06.2015, failing Suit against Defendant Nos. 1 to 4 will be transferred to the list of Undefended Suits.

Date : 30.04.2015

Prothonotary & Senior Master.