

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

SUIT NO. 402 OF 2013

ATITHI DEVELOPMENTS PVT. LTD.)...PLAINTIFF

V/s.

RAMASHANKAR R. YADAV AND OTHERS)...DEFENDANTS

WITH
NOTICE OF MOTION NO. 498 OF 2014
WITH
NOTICE OF MOTION NO. 1007 OF 2013
WITH
INTERIM APPLICATION (L) NO. 11111 OF 2024
IN
SUIT NO. 402 OF 2013

Ms.Leena Shah a/w. Mr.Shubham Mishra i/by M/s.Shah and Furia Associates, Advocate for the Plaintiff.

Mr.Ramchandra Yadav i/by Legal Vizz, Advocate for the Defendant no.4.

CORAM : ABHAY AHUJA, J.

DATE : 22nd JULY 2024

PC. :

1. Pursuant to earlier orders of this Court ending with order dated 12th March 2024, today when the matter is called out, this Court is informed by the learned Advocate for the Plaintiff that the suit has been transferred to the list of Undefended Suits, as regards the Defendants no.1, 2, 3, 5 and 6.

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2. Ms.Shah also informs the Court that since compilation of documents and evidence was directed to be filed on behalf of the Plaintiff, the same was filed, however, since the director of the Plaintiff, who had filed the affidavit of examination-in-chief has passed away, an Interim Application (Lodging) No.11111 of 2024 to permit Mr.Nikhil Kantilal Kotak to lead evidence on behalf of the original witness, has been filed. Mr.Yadav appears for the Defendant no.4 and submits that there are certain factual discrepancies in the said application and that the same be borne in mind while passing any orders on the same.

3. Mr.Yadav, learned Advocate appearing for the Defendant no.4, further informs the Court that the Defendant no.6 has passed away. Mr.Yadav also submits that the Defendant no.4 has filed a Notice of Motion No.498 of 2014 seeking rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), and that, as per directions of the Prothonotary and Senior Master, vide order dated 16th February 2015 in the Chamber Order taken out by the said Defendant, the order dated 8th October 2014 transferring the *lis* to the list of Undefended Suits as against the Defendant no.4 was set aside and the Defendant no.4 was directed to file written statement within a period of four weeks after the pending Notice of Motion No.601 of 2014 was

decided. Mr.Yadav for the Defendant no.4 submits that the said Notice of Motion No.601 of 2014 was on lodging number and that is the same Notice of Motion No.498 of 2014 which is pending, under the said order of the Prothonotary and Senior Master and in the event, the Notice of Motion is allowed, there would be no requirement of filing the written statement.

4. Having heard the learned Advocates in the matter, this Court is of the view that reply be filed by the Defendant no.4 to the Interim Application (Lodging) No.11111 of 2024 within a period of two weeks with a copy to the other side. Rejoinder be filed, in a week thereafter, with a copy to the other side.

5. List on **19th August 2024**, when this Court will consider not only Notice of Motion No.498 of 2014 but also the Interim Application (Lodging) No.11111 of 2024.

(ABHAY AHUJA, J.)