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

APPEAL (L) No. 211 OF 2015
IN
SUIT No. 783 OF 2007
ALONGWITH
NOTICE OF MOTION (L) No. 500 OF 2015
AND

APPEAL (L) No. 226 OF 2015
IN
CHAMBER SUMMONS No. 1172 OF 2014
IN
SUIT No. 783 OF 2007
ALONGWITH
NOTICE OF MOTION (L) No. 556 OF 2015

Arjo Wiggins Chartham Ltd. ... Appellant
Vs.
M/s. Gateway Park Paper Industries & Ors. ... Respondents

Mr. Nikhil Sakhardande, Ram Kakkar, Ms. Bhavya Mohan, Rohan Rajadhyaksha i/b AZB Partners, for the Appellant.

Mr. Mohan Bir Singh a/w Fatema Darbar, for Respondents.

CORAM : V. M. KANADE, &
A. R. JOSHI, JJ.

DATE : MARCH 2, 2015

PC.

1. Appeal (L) No. 226/2015 alongwith Notice of Motion (L) No. 556/2015 are not on board. Upon mentioning, they are taken on board with Appeal (L) No. 211/2015 alongwith Notice of Motion (L) No. 550/2015.

2. Appellant in Appeal (L) No. 226/2015 is aggrieved by the order passed by the learned Single Judge, dismissing the Chamber Summons No. 1172/2014, seeking revocation of leave, which was granted under Clause XII of the Bombay High Court (Letters Patent) Act, 1866.

3. The Plaintiff by filing Suit No. 783 of 2007 is seeking money decree for Rs. 2,99,00,000/- and the leave under Clause XII was granted by the learned Single Judge to the Plaintiff. Thereafter the Defendants filed their written-statement and raised the issue of jurisdiction of the Court, on the basis of Clause 16(2) of the Agreement, entered between Plaintiff No. 2 and the Defendant No. 1. Issues were framed by the learned Single Judge on 10.9.2014 and the issue of jurisdiction has been framed as issue No. 1, and issue of limitation has been framed as issue No. 2. Learned Single Judge dismissed the Chamber Summons, filed by the Defendants on the ground that it has been taken out belatedly and the cross-examination of the Plaintiff's witness is to commence from 3rd March, 2015.

4. Second order, challenged in Appeal (L) No. 211/2015 is order dated 16th February, 2015 whereby the learned Single Judge has directed that if the Defendants do not cross-examine the Plaintiff's witness, then his evidence should be treated closed.

5. In our view, instead of interfering with the impugned order passed by the learned Single Judge, since the issue of jurisdiction has been squarely raised by the Defendants in the written-

statement, it would be appropriate if the said issue is decided as preliminary issue. The learned Single Judge may decide the said issue first. The order dismissing the chamber summons for revocation of leave granted under Clause XII is accordingly modified.

6. Issue No. 1 of jurisdiction be decided, expeditiously, as preliminary issue. Till this issue of jurisdiction is decided, cross-examination of Plaintiff's witness is deferred. Order of payment of costs is set aside. With these directions, both the appeals are disposed of.

7. In view of disposal of Appeal (L) Nos. 211/2015 and 226/2015, Notice of Motion (L) Nos. 550/2015 and 556/2015 taken out therein do not survive and are accordingly disposed of.

Sd/-
[A. R. JOSHI, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemath