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

**NOTICE OF MOTION NO.3644 OF 2011
IN
SUIT NO.1705 OF 1998
WITH
CHAMBER SUMMONS NO. 486 OF 2014
IN
SUIT NO.1705 OF 1996**

Bralco Metal Industries Ltd.

...Applicant/Plaintiff

VS

Elite Auto Industries & Ors.

...Defendants

.....

Mr Gautam Ankhad i/b Dalal & Co. for the Plaintiff.

Mr Zal Anthyaruja i/b Girish Kedia for Defendant Nos.1 to 4.

.....

CORAM : S.C. GUPTA, J.

FEBRUARY 4, 2015

P.C. :

The Chamber Summons seeks an amendment of the plaint by incorporating averments regarding certain promissory notes purportedly executed by Defendant no.2. It is the case of the Plaintiff that these promissory notes were executed between 3 February 1989 to 2 April 1990, that is to say, during the period during which the Plaintiff had advanced monies to Defendant No.1. Advance of these monies is part of the subject matter of the present suit. It is the case of the Plaintiff that there was a fire in the Plaintiff's chamber, as a result of which office documents and files were severely damaged. Such records, as were there and could be occupied, were shifted to the adjacent cabin. It is the case of the Plaintiff that only in or about the 2nd week of March, 2014, when the Managing Director of the Plaintiff was looking for some other records in the adjacent cabin, that he came across these eighteen promissory notes. Learned Counsel for the Plaintiff submits that these documents are relevant for the purpose of the present suit.

2 Learned Counsel for the Defendants refutes this position. Learned Counsel for the Defendants submits that the documents are wholly irrelevant for the purpose of the present suit. Secondly, it is submitted that the trial of the suit has already commenced and, therefore, the Plaintiff ought not to be permitted to amend the plaint as proposed. It is further submitted by learned Counsel for the Defendants that these documents have intentionally been sought to be brought in after the death of Defendant No.2, who alone would be in a position to know about the genuineness of these documents.

3 The question of relevance as also admissibility of these documents, shall be decided in the course of the trial. For the purpose of the present Chamber Summons, it is not necessary to go into these issues. The Plaintiff has made out a case for amendment of the plaint despite the commencement of the trial within the meaning of the proviso to order VI Rule 17 of the Code of Civil Procedure, 1908, as noted above.

4 Accordingly, the Chamber Summons is made absolute in terms of prayer clause (a). The amendment to be carried out within a period of two weeks from today. There shall be no order as to costs. Place the Notice of motion on 13 February 2015.

(S.C.GUPTE J.)