IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 822 OF 2015
IN
SUIT NO. 2499 OF 2012

Yogendra Thakkar ...Applicant
(Orig. Defendant No.2)

In the matter between:

N.M. Raiji & Co. & Ors. ...Plaintiffs

Vs.

Shantilal K. Patel and another ...Defendants

Mr. Snehal Shah along with Ms. Priyanka Kothari & Ms. Neha Bhatt, instructed by M/s. Bilawala & Co., for the Applicant-Defendant No.2.

Mr. Simil Purohit, instructed by M/s. Divya Shah Associates for the Plaintiffs.

CORAM: S. J. KATHAWALLA, J.
Date: 26th November, 2015

P.C.

1. The above Chamber Summons is taken out by the Applicant – Yogendra Thakkar, Original Defendant No. 2, seeking deletion/striking off certain paragraphs from the first affidavit in lieu of examination-in-chief of Mr. Vinay D. Balse (PW 1) dated 22nd December, 2014, more particularly mentioned in

Schedules-I and II to the Chamber Summons on the ground that the same are not relevant to the issues framed by this Court and are irrelevant as the Plaintiffs have not pleaded the same in the Plaint.

2. The Plaintiff No. 1 in the Suit – N.M. Raiji & Co., is a registered Partnership firm of Chartered Accountants which is also registered with the Institute of Chartered Accountants of India (ICAI). The Plaintiff Nos. 2 to 4 are Partners of Plaintiff No.1 firm. Defendant No. 1 is an ex-employee of Plaintiff No.1 firm and also a qualified Chartered Accountant and member of ICAI. Defendant No. 2 is a Chartered Accountant and a Partner of the Plaintiff No. 1 firm.

3. The present Suit is filed by the Plaintiffs, inter alia, for a perpetual injunction restraining Defendant No. 1 from engaging in defamatory acts against the Plaintiff No.1 and for damages and/or compensation for the loss, harm and injury caused to the reputation of Plaintiff No.1 firm. By the present Suit, the Plaintiffs have also sought restraint orders against Defendant No. 2 from engaging in acts prejudicial to the interest of Plaintiff No.1 and have also claimed damages for loss of business and reputation caused by the acts of Defendant No.2 which acts according to the Plaintiffs constitute breach of trust.

4. The Plaintiffs have in the Plaint inter alia stated/alleged as follows:

4.1 Defendant No. 2 being a Chartered Accountant worked with Plaintiff No.1 from August 1980 till 31st July, 1995 when he left the services of the Plaintiff No.1 on his own accord and without any notice to Plaintiff No.1. About three and half years thereafter Defendant No.1 for the first time sent a letter dated 30th January, 1999 to the Plaintiff No. 1 demanding payment of certain moneys allegedly due to him towards gratuity, bonus and provident fund from the Plaintiffs.

4.2 The Plaintiffs after due consideration of the claim of Defendant No. 1 found no merit in the said claim pertaining to gratuity. However, Plaintiff No. 1 vide its letter dated 19th February, 1999 asked Defendant No.1 to contact one Mr. S.D. Khot of Plaintiff No. 1 who was in charge of such matters. However, there was no response from the said Defendant.

4.3 Defendant No. 1 did not respond to the said letter dated 19th February, 1999. However, Defendant No. 1 after about 4 years vide his letter dated 18th October, 2003 once again sought payment of the purported gratuity amount allegedly due and payable to him by the Plaintiffs. Since, according to the Plaintiffs, no amount was due and payable by them to the Defendant No.1, they did not respond to his letter dated 18th October, 2003. Defendant No. 1 also did not pursue his claim for the next two years, but once again started writing letters from the year 2005 demanding payment of gratuity.

4.4 Thereafter the Defendant No. 1 began with a mala fide and vexatious orchestrated campaign against the Plaintiffs. Defendant No. 1 purchased nominal shares in some of the most prestigious and listed Companies which were clients of Plaintiff No. 1 and wrote letters to the said Companies with defamatory and libellous content against the said Plaintiffs. Without an iota of evidence supporting his contentions, Defendant No.1 made false statements and linked the resignation of some of the Partners of Plaintiff No. 1 to the alleged loss of trust within the firm itself. Defendant No. 1 branded Plaintiff No. 1 as a distrustful, greedy firm and further alleged that the purported feuds of the Partners inter se had reduced the firm to an ordinary firm of Chartered Accountants. Defendant No. 1 made blatantly false and defamatory statements and distorted facts in an attempt to deliberately destroy Plaintiff No.1's image in front of its most prestigious clients. Defendant No. 1 casted aspersions on the credibility of the partners of the firm and upon the performance of the firm as an efficient credible statutory auditor. The defamatory and libellous letters addressed by the Defendant No. 1 to the clients of Plaintiff No. 1 between the years 2005 and 2009 are annexed and marked as Exhibit-C to the Plaint. In fact, as set out in paragraph 10 of the Plaint in one of the letters Defendant No. 1 went to the extent of impersonating another employee of Plaintiff No. 1 firm.

4.5 Defendant No. 1 simultaneously filed an application against Plaintiff No. 1 dated 26th August, 2005 before the Assistant Commissioner of Labour/Controlling Authority under the Payment of Gratuity Act, 1972 seeking payment of Rs. 1,23,610/- . Though the Plaintiffs initially contested the application which according to them was frivolous and mala fide, only since the letters sent by Defendant No. 1 to the Plaintiff No. 1's clients was causing grave embarrassment to the Plaintiffs, the Plaintiffs agreed to settle the matter with Defendant No. 1 by paying him an amount of Rs. 89,000/- . The said settlement was recorded by the Controlling Authority under the Payment of Gratuity Act, 1972 by his order dated 31st August, 2009 (Exhibit-E to the Plaint).

4.6 In spite of reaching an amicable settlement under the supervision of the Controlling Authority under the Payment of Gratuity Act, 1972, Defendant No. 1 once again started writing letters to the clients of Plaintiff No.1 making defamatory allegations against the Plaintiff No. 1. Defendant No. 1 continued to purchase minimum shares in all such Companies which were the prestigious clients of Plaintiff No.1 and then, in his capacity as a shareholder wrote letters to the said Companies requesting them not to appoint Plaintiff No. 1 as their statutory Auditors. The Defendant No. 1 vide his letter dated 6th June, 2010, addressed to one of the Plaintiffs' clients viz. Mirc Electronics Ltd. (i.e. ONIDA) made several false, mala fide, vexatious, defamatory and libellous statements against Plaintiff No.1 and its partners and requested Mirc Electronics Ltd. not to employ Plaintiff No. 1 as an Auditor for the year 2010-2011. Defendant No. 1 has in the said letter, inter alia, alleged that on certain matters the Plaintiff No. 1 is functioning under the directives of the Court. He has recorded that there are various disputes going on amongst the Partners including criminal cases filed by Partner/s against other Partner/s. Complaints are also pending before the ICAI. Defendant No. 1 has further recorded that earlier, in view of 'stop payment' instructions from a Partner, even the Bank account of the Plaintiff firm was frozen for a fairly long period. Defendant No. 1 has in the said letter also set out a list of 15 Companies who have replaced the firm of Plaintiff No. 1 by appointing certain other firms as its Auditors. Defendant No. 1 has, by the said letter, urged the Chairman of Mirc Electronics Ltd. (Exhibit-F to the Plaint) not to reappoint Plaintiff No. 1 as Auditors for the year 2010-2011. Identical letters were written by Defendant No. 1 on the same day to the Directors of Indian Hotels Company Ltd. (Exhibit-G to the Plaint), and Tata Global Beverages Limited (Exhibit G-1 to the Plaint).

4.7 A concurrent reading of the said letters clearly shows the mala fide vexatious, dishonest criminal intention and an effort on the part of Defendant No.1, solely motivated towards causing harm loss and prejudice to the Plaintiffs. It is evident that Defendant No.1's only intention is to coerce the Plaintiffs into paying unwarranted sums to the Defendant No.1.

4.8 As a consequence of such acts of Defendant No.1, the said Companies/clients of Plaintiff No.1 asked Plaintiff No. 1 to give explanatory statement and/or clarifications so that the said issue could be discussed with their Board Members.

4.9 On 25th January, 2012, the Plaintiff No.1 and Defendant No. 1 executed a MoU whereunder Defendant No.1, inter alia, agreed that he would from the date of execution of MoU refrain from acting in a manner that would cause harm to Plaintiff No.1's stature and goodwill in the profession and in the corporate world. In consideration of the same the Plaintiffs agreed to pay Rs. 49,000/- to the Defendadnt No. 1 towards full and final settlement of all his claims against the Plaintiffs. Defendant No. 1 also agreed to refrain from making derogatory remarks against Plaintiff No.1. The relevant extracts of the said MoU are reproduced in paragraph 18 of the Plaint.

4.10 Defendant No.1 thereafter again breached the terms of the said MoU and again started writing the same defamatory letters to some of the prestigious clients of Plaintiff No. 1 like Mirc Electronics Ltd., ICICI Prudential Trust Ltd., Tata Coffee Ltd., etc. In paragraph 19 of the Plaint, the Plaintiffs have inter alia stated that "**...It has come to the knowledge of Plaintiffs that it is Defendant No.2 who has instigated, connived with and fully**

assisted Defendant No. 1 in again blackmailing the Plaintiffs and thereby extorting monies from them, especially given the fact that Defendant No.2 has several on-going issues/disputes with the Plaintiff." *(emphasis supplied).*

4.11 According to the Plaintiffs a perusal of the letter dated 10th February, 2012, by Defendant No. 1 addressed to Mirc Electronics Ltd. (Exhibit-J to the Plaint) "**clearly evidences the mala fide, vexatious, criminal and defamatory motives of the Defendants as the Defendants have evidently manipulated the facts to mislead Mirc Electronics Ltd. into believing that allegedly Plaintiff No. 1 has been and/or removed as statutory auditors from several reputed firms/companies, in particular from Indian Hotels Company Ltd. and Tata Chemicals Ltd. allegedly due to the purported internal feuds and the letters written by Defendant No.1** (emphasis supplied)

4.12 Vide its letter dated 10th April, 2012, Defendant No. 1 again addressed a defamatory letter to ICICI Prudential Trust Ltd. with identical content. A copy of the letter was also sent to the Chairman and Board of Directors of ICICI Bank Ltd.

4.13 The Plaintiffs have further averred/alleged in the Plaint that **"It is relevant and important to note that till date Defendant No. 1 has**

not written any such malicious letters to Companies, statutory audits of which are handled by Defendant No.2. Not only are there no allegations made against Defendant No. 2 but certain internal confidential facts seem to have been disclosed to Defendant No.1 and the same have been clearly distorted by Defendant No. 1 in order to support his fraudulent, vexatious, mala fide, defamatory and libellous contentions against the Plaintiffs (emphasis supplied).

4.14 Defendant No. 1 has written a similar letter dated 3rd May, 2012 to the Chairman and Board of Directors of Tata Coffee Ltd. (Exhibit-L to the Plaint).

4.15 Defendant No. 1 has also sent special notices under Section 225 of the Companies Act, 1956 to the Companies including Mirc Electronics Ltd. requesting the placement of Resolutions at its respective AGMs for removing Plaintiff No. 1 from being statutory Auditors of the said Companies. Such notice is inter alia addressed to Mirc Electronics Ltd.

5. The Plaintiffs have therefore filed the above suit against Defendant Nos. 1 and 2 inter alia for the following reliefs:

> *"(a) A perpetual injunction restraining Defendant No.1 from writing such letters to Plaintiff No.1's clients with or without defamatory content and/or from indulging in such or any other*

defamatory acts against the Plaintiffs;

(b) A perpetual injunction restraining Defendant No. 2 in engaging in acts prejudicial to the interest of Plaintiff No.1;

(c) An order directing Defendant No. 1 to pay as damages a sum of Rs. 5,00,00,000/- (Rupees Five Crores only) for breach of the terms of the said Agreement and/or for loss of business caused to Plaintiff No.1 by the defamatory and/or other prejudicial acts of Defendant No.1;

(d) An order directing Defendant No. 2 to pay as compensation a sum of Rs. 1,00,00,000/- (Rupees One crore only) to Plaintiff No. 1 for the loss of business and reputation caused by the act of Defendant No.2.

6. On 2nd May, 2014, issues were framed in the above Suit. On 22nd December, 2014, the Plaintiff filed the affidavit in lieu of examination-in-chief of PW 1 and served the same on the Advocates for Defendant No.2. On 23rd December, 2014, the Suit was listed on Board and adjourned to 13th January, 2015 to decide on admissibility/marking of documents. Between 7th January, 2015 and 13th January, 2015, several meetings were held when inspection of documents was completed. On 29th January, 2015, a Supplementary affidavit of evidence of PW 1 was filed and served upon the Advocates for the Defendant No.2. On 13th February, 2015, documents relied upon by the Plaintiffs were marked and a Commissioner was appointed to record the cross-examination of PW 1. On 5th

March, 2015, a preliminary meeting was held with the Commissioner. On 29th April, 2015, Defendant No. 2 took out the aforesaid Chamber Summons to delete/discard/strike off paragraphs of the first affidavit of evidence dated 22nd December, 2014 and served the same on the Advocates for the Plaintiff on the same day.

7. The Learned Advocate appearing for Defendant No. 2 has submitted that the paragraphs in the first affidavit in lieu of examination-in-chief of PW1 dated 22nd December, 2014, as set out in Schedule-I of the Chamber Summons be deleted /discarded/striked off as the same are beyond the pleadings. The said Schedule-1 is reproduced hereunder:

> "**Para 2.** *I say that the defendant No. 2 who is a partner of the Plaintiff No. 1 firm has instigated, connived and acted in collusion with Defendant No. 1 by parting with sensitive and internal information to Defendant No. 1 as explained herein below in detail. The Defendant No. 1 has illegally and mala fidely used the sensitive and internal information so received from Defendant No. 2 by addressing false, frivolous and highly defamatory letters to the clients of the Plaintiff No. 1 firm, who were listed companies with the intent of causing the Plaintiff No.1 firm monetary losses as well as loss of reputation and thereby made the Plaintiff No. 1 firm lose audit assignments of various reputed and well-known companies as more*

particularly stated herein below. The plaintiffs are therefore seeking damages against Defendant No. 2 as more particularly prayed for in the Plaint.

Para 5: *in or around 2001, disputes arose between the then partners of the Plaintiff firm and Defendant No.2. Defendant No. 2 insisted on being granted a higher percentage in the profit of the firm including a say in the management and affairs of Plaintiff firm. Defendant No.2's brother, M.N. Thakkar, at the relevant time was a senior partner of the Plaintiff firm.*

Para 6: *On or around November 2000, the Plaintiff firm decided to collaborate with Dalal & Shah, a reputed firm of Chartered Accountants, in order to augment its consultancy business. Accordingly, the said M.N. Thakkar applied to ICAI to seek registration of a new partnership firm in the name of Gandhi Dalal & Shah. This new partnership firm contemplated seven (7) partners, four (4) of which were to be amongst the existing partners of the Plaintiff firm and the balance from Dalal & Shah. This new partnership although entered into by four partners of the Plaintiff, were in fact, for the benefit of the firm as 70% of the profit generated therefrom was to be available to all the partners of the Plaintiff firm.*

Para 7: *In or around December 2000, as per the aforesaid terms, a Deed of Partnership was executed between the partners of the Plaintiff firm and M/s. Dalal & Shah in the name and style of M/s. Gandhi Dalal & Shah. The last signature on the said Deed were affixed by Mr. Mahendra Thakkar on February 12, 2001.*

Para 8: *Defendant No.2, in order to achieve his objectives of* *obtaining higher percentage and also to have a higher say in the affairs and management of the firm, used this as an opportunity to pressurize the remaining partners.*

Para 9: *Due to the incessant frivolous objections raised by Defendant No. 2 (which were designed to suit his own requirements), by a subsequent Deed dated 20th February, 2001, the Partnership firm Deed of M/s. Gandhi Dalal & Sons was cancelled and terminated and therefore the firm of Gandhi Dalal & Shah, ceased to exist thereafter. In the interregnum, the said M/s. Gandhi Dalal & Shah never functioned and/or carried out any professional activities. It is pertinent to note that even this Deed of Cancellation was executed by the said Mr. M.N. Thakkar, the elder brother of Defendant No. 2, who was residing with Defendant No.2.*

Para 10 : *Inspite of the Deed of Partnership of Gandhi Dalal & Shah having been cancelled, without having commenced any activity, Defendant No. 2 continued with his tirade against the other partners of the Plaintiff firm and carried out the following acts:*

(i) *Filed a petition before the Sole Arbitrator appointed in terms of the Deed of Partnership of the Plaintiff firm, in which he named Plaintiff No. 2 and certain other partners as the accused by misrepresenting to the sole Arbitrator that they were the signatories to the Deed of Partnership of M/s. Gandhi Dalal & Shah and seeking their expulsion, while conveniently excluding his own brother Mr. M.N. Thakkar who was actually a signatory to the Deed. The said Sole Arbitrator resigned himself as the arbitrator.*

(ii) *Pursuant thereto, after all the partners of the Plaintiff firm nominated their independent arbitrators, the arbitrator appointed by Defendant No. 2 subsequently, suo-motu, dismissed and/or terminated the mandate of all other arbitrators appointed by the other partners in four arbitration matters and took upon himself as being the sole arbitrator and passed an Award expelling the Plaintiffs and a then existing partners, Mr. Sujal Shah. The said award was subsequently challenged and was set aside by this Hon'ble Court which while setting aside the order, imposed exemplary costs aggregating Rs. 2, 00,000/- on Defendant No. 2 for manipulating the arbitration proceedings. A copy of the order dated 25th October, 2005 to the above effect is tendered herewith at Serial No. 1 which, I submit be read in evidence and marked as an exhibit.*

(iii) Defendant No. 2 in July 2001 also filed false police complaints with respect to the partnership deed of Gandhi Dalal & Shah and falsely alleged that the then partners of the Plaintiff firm (excluding his brother Mr. M.N. Thakkar and Mr. B.L. Bhanu, a supporter of Defendant No.2) as well as the partners of Dalal & Shah continued to carry on business under Gandhi Dalal & Shah and were siphoning/misappropriating funds from that firm and were causing loss to him.

(iv) After the police authorities concluded that it was a civil case, Defendant No. 2 filed a criminal complaint in the Metropolitan Court at Kurla in July, 2002, in which he made

allegations of misappropriation and forgery against all the then partners of the Plaintiff firm (excluding his brother and the said Mr. B.L. Bhanu) and that of M/s. Dalal & Shah).

(v) *The partners constituting the Dalal & Shah faction instituted proceedings to quash the said complaint/criminal proceedings. Ultimately, by an order dated May 16, 2008, the Hon'ble Supreme Court was pleased to quash the complaint against Dalal & Shah. Correspondingly, pursuant to further rounds of litigation, the complaint against the partners of the Plaintiff firm were also quashed. I hereby tender at Serial No. 2 copies of the orders passed in the aforesaid proceedings and submit that the same be marked in evidence.*

7.1 In my view, the contents of the paragraphs set out in Schedule I of the Chamber Summons and reproduced hereinabove, cannot be held to be beyond the pleadings for the reasons set out in the following paragraphs.

7.2 The Plaintiffs have in paragraph 9 of the Plaint alleged/ averred that the present suit has been filed to restrain Defendant No. 2 from engaging in acts prejudicial to the interest of Plaintiff No.1 and also to seek damages for loss of business and reputation caused by Defendant No.2's acts of breach of trust. Again in paragraph 19 of the Plaint, the Plaintiffs have stated that it has come to the knowledge of Plaintiffs that it is Defendant No. 2 who has instigated, connived with and fully assisted Defendant No. 1 in again blackmailing the

Plaintiffs and thereby extorting monies from them, especially given the fact that Defendant No. 2 has several ongoing issues/disputes with the Plaintiffs. In para 20 of the Plaint, the Plaintiffs have pointed out that the perusal of the letter dated 10th February, 2012, by Defendant No. 1 addressed to Mirc Electronics Ltd. clearly evidences the mala fide, vexatious, criminal and defamatory motives of the **Defendants** as the **Defendants** have evidently manipulated the facts to mislead Mirc Electronics Ltd. into believing that allegedly Plaintiff No. 1 has been replaced and/or removed as statutory auditors from several reputed firms/companies, in particular from Indian Hotels Company Ltd. and Tata Chemicals Ltd. allegedly due to the purported internal feuds and the letters written by Defendant No.1. Again in paragraph 21 of the Plaint, the Plaintiffs have referred to the letter dated 10th April, 2012, written by Defendant No.1 to ICICI Prudential Trust Ltd. with identical content casting aspersions against the Plaintiff No. 1. It is categorically stated in that paragraph that *"It is relevant and important to note that till date Defendant No. 1 has not written any such malicious letters to Companies, statutory audits of which are handled by Defendant No.2. Not only are there no allegations made against Defendant No. 2 but certain internal confidential facts seem to have been disclosed to defendant No.1 and the same have been clearly distorted by Defendant No.1 in order to support his fraudulent, vexatious, mala fide, defamatory and libellous* *contentions against the Plaintiffs".* The Plaintiffs have thereafter in the Plaint prayed for a perpetual injunction restraining Defendant No. 2 from engaging in acts prejudicial to the interest of Plaintiff No.1 and have also sought direction against Defendant No. 2 to pay as compensation a sum of Rs. 1, 00, 00,000/- to Plaintiff No. 1 for the loss of business and reputation caused by the act of Defendant No.2. In view of the pleadings/averments set out in paragraph 4 above and more particularly in view of what is repeated hereinabove, the submission of Defendant No. 2 that the contents of paragraph 2 of the evidence are beyond the pleadings cannot be accepted. The contents of paragraphs 5, 6, 7, 8, 9 and 10 of the evidence only amplifies the contention of the Plaintiffs, inter alia, in paragraph 19 that the Defendant No. 2 has several ongoing issues/disputes with the Plaintiffs. In view thereof, the submission that the contents of the subject paragraphs in the affidavit in lieu of examination in chief of PW 1 are beyond the pleadings cannot be accepted and is rejected.

8. The next contention advanced on behalf of Defendant No. 2 is that the paragraphs in the first affidavit in lieu of examination in chief of PW 1 dated 22nd December, 2014, as set out in Schedule II of the Chamber Summons deserves to be deleted/discarded/striked off, since no material particulars have been pleaded. The said Schedule II is reproduced hereunder:

*"**Para-2** I say that the Defendant No. 2 who is a partner of the Plaintiff No. 1 firm has instigated, connived and acted in collusion with Defendant No. 1 by parting with sensitive and internal information to Defendant No. 1 as explained herein below in detail. The Defendant No. 1 has illegally and malafidely used the sensitive and internal information so received from Defendant No. 2 by addressing false, frivolous and highly defamatory letters to the clients of the Plaintiff No. 1 firm, who were listed companies with the intent of causing the Plaintiff No. 1 firm monetary losses as well as loss of reputation and thereby made the Plaintiff No. 1 firm lose audit assignments of various reputed and well-known Companies as more particularly stated herein below. The Plaintiffs are therefore seeking damages against Defendant No. 2 as more particularly prayed for in the Plaint.*

***Para-28** I say that despite executing the said MOU, the Defendant No. 1 committed breaches of the terms of the said MOU, by again writing the same defamatory letters to some of the prestigious clients of Plaintiff No. 1. I say that the ct of writing such letters to the prestigious clients of Plaintiff No. 1 is not in breach of the terms of the said MOU but the contents of the said letters are again defamatory libellous and could not have been known by Defendant No. 1 unless informed by Defendant No. 2 as the same was confidential information known only to the parties of Plaintiff No. 1 firm. I state that the perjury proceedings initiated by Defendant No. 2 against the Plaintiffs* *and the Criminal Complaint filed by Defendant No. 2 against the Plaintiffs and Plaintiff No. 1's then partners is not an information that was available to the public at large. I state that the very fact that statements in relation to the aforesaid was mentioned in various letters addressed by Defendant No. 1 to the clients to the Plaintiffs (albeit excluding the clients of Defendant No. 2) clearly evidences the fact that such confidential information and / or information not available to the general public was made available only by Defendant No. 2 to Defendant No. 1 with the clear intention to cause prejudice and loss to the Plaintiffs. I state that perusal of the various letters addressed by Defendant No. 1 to the clients of the Plaintiffs for whom the Plaintiffs did statutory auditing, would make it abundantly clear that the Defendant No. 1 was given information by Defendant No. 2 and that too in such a timely manner that the letters corresponded the evens as they took place. I say that Defendant No. 1 kept on changing the contents of his allegations as per the orders being passed against Defendant No.2 whereby the Courts held against Defendant No. 2 with respect to the said allegations.*

Para 31 *Vide his letter dated 3rd May, 2012, Defendant No. 1 requested the Board of Directors of Tata Coffee Ltd. to look into the internal workings of the Plaintiff firm and admitted that he was instrumental in removing the Plaintiff firm as the statutory auditor of several reputed companies. This was despite the fact that Defendant No. 1 had settled his claims against the Plaintiff firm.*

Para 34 *The entire conduct of Defendant No. 1 was at the instance of Defendant No.2. Defendant No. 1 initially sought to circulate the details of the criminal complaint filed by Defendant No.2 against the partners as stated hereinabove. After the criminal complaints were quashed by the Hon'ble Court pursuant to the directions given by the Hon'ble Supreme Court, Defendant No. 1 changed his course of action and sought to raise issues with respect of contempt proceedings initiated against the partners of the Plaintiff firm, which proceedings had been initiated by Defendant No. 2 himself.*

Para 36 *I say that in the 70 (seventy) year old history of the firm, till date, not a single shareholder of any company, where the Plaintiff No. 1 has been a statutory auditor, has written a single letter to any of these companies demanding the removal of Plaintiff No.1. Defendant No. 1 is the only shareholder to do so. Further, it is not the case that the Defendant No. 1 was always a shareholder of these companies. The shareholding of the companies were acquired by Defendant No. 1 with the sole purpose of extracting monies from the Plaintiff. The fact that even after receiving monies from the Plaintiff firm under the said MOU, Defendant No.1 continues to issue letters to the clients handled by the Plaintiff Firm further points to the inducement by Defendant No.2, because at that time (from May 2012 onwards) Defendant No. 2 was plotting to bring the Plaintiff firm to a complete standstill by refusing to sign exchequers relating to the salaries of the audit staff of the Plaintiff firm on* *non-existent grounds. Defendant No. 2 stopped signing cheques due to which the other partners of the Plaintiff firm has to pay the salaries of staff which ultimately was reimbursed by the Plaintiff firm only pursuant to the orders of the Court. I hereby tender at* ***Serial No. 28*** *copy of order dated 9th April 2013 passed by this Hon'ble Court passed in Arbitration Application No. 244 of 2012. The aforesaid conduct only shows that Defendant No. 2 was intending to bring the business of the Plaintiff firm to a complete standstill.*

Para 37. *Fed up with Defendant No. 2's continued harassment to the partners and audit staff of the firm (due to which the staff of the Delhi Office did not receive their salaries for five months) Plaintiff No. 3 Mr. Jayesh M. Gandhi, tendered his resignation in February 2013. Following this, Defendant No. 2 published a notice in a reputed newspaper announcing the retirement of Plaintiff No.3, an unheard of act in the profession and thereafter wrote threatening letters to clients serviced by Plaintiff No.3, warning them against not reappointing the Plaintiff firm as their Statutory Auditor. As was expected most of the listed companies and reputed clients such as Mirc Electronics Limited, Prism Cement Limited and ICICI Prudential Mutual Fund did not reappoint the Plaintiff Firm as their statutory auditor. Plaintiff No. 2 would like to clarify that although this is not the cause for action for claiming damages under this suit, it amply demonstrates how Defendant No.2, right from the year 2001 was plotting against the removal of the* *other partners and read with the relevant foregoing paras and para 38 below, demonstrates the motivation of Defendant No. 2 for inducement of breach.*

Para 40 *I say that Defendant No. 2 was occupying his Chambers at 3rd Floor, Bombay mutual Building, Sir PM. Road, Fort, Mumbai-400 001 from the year 2003 till around end of June 2012 after which he shifted to Universal Insurance Building, 6th floor, Sir P.M. Road, Fort, Mumbai-400 001. During this period, I have personally seen Defendant No. 1 coming to meet Defendant No. 2 in his chambers on a few occasions and having closed door meetings. I was also informed about Defendant No. 1's meetings with Defendant No. 2 by the office staff. It is important to note that these meetings took place before the suit for damages 2499 of 2012 was filed against Defendant No. 1 and Defendant No.2. I say that since Defendant No. 1 had left the Plaintiff No. 1 firm several years ago and since the Defendant No. 1 had initiated false and bogus and defamatory campaign against the Plaintiffs herein, there was no reason of the Defendant No. 1 coming to meet Defendant No. 2 as the complaint of Defendant No.1 was against the Plaintiff firm and Defendant No. 2 was a partner of the Plaintiff firm."*

9. In my view, the contents of the paragraphs set out in Schedule II of the Chamber Summons and reproduced hereinabove cannot be deleted on the ground that the same are lacking in material particulars for the reasons set out in the following paragraph.

10. In paragraph 3 of the Plaint, the Plaintiffs have indeed alleged that Defendant No. 2 has committed acts constituting breach of trust. The Plaintiffs have thereafter set out in detail in the Plaint that though Defendant No. 1 left the services of Plaintiff No. 1 on his own and stopped attending his job after 31st July, 1995, in the series of letters written by Defendant No. 1 between 2005 and 2012, he has repeatedly made references to the internal feuds between the Partners, non-operation of Bank accounts, the problems faced by the employees, etc. All those letters written by the Defendant No. 2 are annexed to the Plaint. In support of its case of collusion/connivance, breach of trust by defendant No. 2, the Plaintiffs have in paragraph 19 of the Plaint pleaded that the Defendant No. 1 in breach of the MoU again started writing the same defamatory letters (earlier written) to some of the prestigious clients of Plaintiff No. 1 like Mirc Electronics Ltd., ICICI Prudential Trust Ltd., Tata Coffee Ltd., to name a few. The contents of the said letter are defamatory and libellous and it has come to the knowledge of the Plaintiffs that it is defendant No. 2 who has instigated, connived with and fully assisted Defendant No. 1 in again blackmailing the Plaintiffs and thereby extorting monies from them, especially given the fact that

Defendant No. 2 has several ongoing issues/disputes with the Plaintiffs thereby meaning that such letters containing the defamatory and libellous material are written at the instance of Defendant No. 2 who is assisting Defendant No. 1 in view of several ongoing issues/disputes with the Plaintiffs. All such letters are annexed to the Plaint and are before the Court. The Plaintiffs have in paragraph 20 of the Plaint made a categorical assertion that a perusal of the letter dated 10th February, 2012 by Defendant No. 1 addressed to Mirc Electronics Ltd. clearly evidences the mala fide, vexatious, criminal and defamatory motives of the **Defendants** as the Defendants have evidently manipulated the facts to mislead Mirc Electronics Ltd. into believing that allegedly Plaintiff No. 1 has been replaced and/or removed as statutory auditors from several reputed firms/companies, in particular from Indian Hotels Company Ltd. and Tata Chemicals Ltd. allegedly due to the purported internal feuds and the letters written by Defendant No.1. In support of its case that the Defendant No.2 is conniving and assisting Defendant No. 1 in writing such letters, the Plaintiffs have in paragraph 21 of the Plaint pointed out that Defendant No. 1 has not written any such malicious letters to Companies, statutory audits of which are handled by Defendant No.2. The Plaintiffs have categorically stated that not only are there no allegations made against Defendant No. 2 but certain internal confidential facts seems to have been disclosed to Defendant No.1 and the same have been clearly distorted by Defendant No. 1 in order to support his fraudulent, vexatious, mala fide, defamatory and libellous contentions against the Plaintiffs. The Plaintiffs have therefore clearly pleaded that Defendant No. 2 is guilty of breach of trust and that he seems to have provided confidential facts/materials to Defendant No. 1 which is clear from the letters annexed to the Plaint. The Plaintiffs have only amplified in the affidavit in lieu of examination in chief how confidential material which according to the Plaintiffs, cannot be to the knowledge of Defendant No. 1 who had left his job on 31st July, 1995, is found in the letters written by Defendant No. 1 to the Plaintiffs' clients, which letters are annexed to the Plaint. It therefore cannot be held that no material particulars have been pleaded by the Plaintiffs qua the paragraphs in the first affidavit in lieu of examination in chief of PW 1 set out in Schedule-II to the Chamber Summons. The Learned Advocate appearing for the Defendant No. 2 has submitted that at least the contents of paragraph 40 of the evidence which is set out in Schedule-II of the Chamber Summons deserves to be deleted. I do not agree with the said submission. The Plaintiffs have in paragraph 19 of the Plaint categorically stated that it has come to the knowledge of Plaintiffs that it is Defendant No. 2 who has instigated, connived with and fully assisted Defendant No. 1 in again blackmailing the Plaintiffs and thereby extorting monies from them, especially given the fact that Defendant No. 2 has several ongoing issues/disputes with the

Plaintiffs. In support of this submission in the Plaint, the Plaintiffs have already annexed the letters written by Defendant No.1, which makes it clear that Defendant No. 1 is in the know of certain confidential information which otherwise he would not have known since he is not in the employment of the Plaintiffs after 31st July, 1995. The witness has in paragraph 40 of his evidence deposed that from the year 2003 till around the end of June 2012, he has personally seen Defendant No. 1 coming to meet Defendant No. 2 in his chambers on a few occasions and having closed door meetings and that his office staff has also witnessed such meetings. The Advocates for the Defendants are always at liberty to cross-examine the Plaintiffs' witness qua his deposition. However, in my view, no case is made out for striking off/ discarding/deleting any of the paragraphs of the evidence for the reasons alleged by Defendant No.2.

11. In view of what is discussed hereinabove, the case law cited by the Advocates for Defendant No. 2 lends no assistance to Defendant No.2. The Chamber Summons is therefore dismissed. However, it is clarified that the trial Judge will not be influenced by any observations made herein, at the time of the hearing of the Suit.

(S.J. KATHAWALLA, J.)