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

NOTICE OF MOTION (L) NO.2140 OF 2015
IN
SUIT (L) NO.806 OF 2015

M/s. Kirtanlal & Sons … Plaintiff
Vs.
M/s. TTI, Tubacex Tubox Inoxidables
& Ors. … Defendants

Mr. Dinyar Madon, Sr. Adv., a/w. Mr. Sharan Jagtiani, Counsel, a/w. Mr. Rohan Lavkumar, counsel i/b. M/s. B A Amin & Co. for plaintiff.
Zal Andhyarujina, Adv. a/w. Mr. Hursh Meghnani, Adv. a/w. Mr. Vikash Jha, Adv. i/b. Cyril Amarchand Mangaldas, Adv. for defendant Nos.1, 3 & 4.
Sumit Patni, Adv. a/w. Mr. Som Sinha, Adv. for defendant No.2.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 21st August, 2015.

P.C. :

1. The plaintiff has sued on two causes of action. The plaintiff claims to be the sole selling agent of defendant No.1. The agency agreement is terminable with three months notice. Notice of three months is not given. The plaintiff would require to be compensated for all the contracts entered into by defendant No.1 with various parties in India which otherwise would have been entered into through the plaintiff. The defendants must, therefore, keep accounts of their contracts.

2. The plaintiff also claims to be a partner in joint venture to be executed by and between defendant No.1 and any other Indian party for trade in India. The various emails between the parties may

be circumstantial evidence to prove prima facie such agreement between the plaintiff and defendant No.1. Even an MOU has been executed by defendant No.1 which accounts for the plaintiff and which the plaintiff has executed along with defendant No.1 and a third party. The proposed contracts have not materialised. The parent company of defendant No.1 and defendant No.3 which have the Special Purpose Vehicle (SPV) of defendant No.1 in India thereafter entered into joint venture agreement with defendant No.2 but without the aegis of the plaintiff.

3. The plaintiff seeks to enforce the negative covenant in an oral agreement between the plaintiff and defendant No.1 and seeks reliefs of restraint against the trade of defendant No.1 with such third party without the plaintiff as its party.

4. Since the negative covenant is sought to be enforced upon an oral contract, the plaintiff would require to lead oral evidence and be cross examined to that end. Prior to such exercise the accounts being maintained by defendant would serve the purpose of protecting plaintiffs' interest, if any, that would arise upon a case of partnership or joint venture being made out in trial.

5. Hence the following order :

1. Defendant No.1 shall maintain accounts of its dealings with all Indian parties for all trading activities in India, pending the suit.
2. Defendant No.3 shall maintain accounts of their trades in India, pending the suit and produce the same in trial.
3. Counsel on behalf of defendant Nos.1 and 3 states that defendant Nos.1 and 3 shall file their written statements within

three weeks.

4. Notice of Motion disposed of accordingly.
5. Leave to amend is granted to the plaintiff to join the parent company of defendant No.1 shown above as a necessary and proper party and to carry out consequential amendments.
6. Suit to be on board on 11th September, 2015.

(ROSHAN DALVI, J.)