

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****CHAMBER SUMMONS NO. 1465 OF 2015****IN****SUIT NO. 1235 OF 2008**

Mr.Paresh VasANJI Shah

...Applicant / Orig.Deft No.1

In the matter of

M/s.Amrutlal Zinabhai Steels Pvt.Ltd.

...Plaintiff

vs.

Mr.Paresh VasANJI Shah & Ors.

...Defendants

Mr.Nikhil Karnawat i/b. AKS Legal for Applicant.

Mr.Piyush Raheja with Ms.Jyoti Sinha with Mr.Aditya Mehta i/b. Negandhi Shah & Himayatullah for Plaintiff.

Mr.Nimeet G. Sharma i/b. Mohan Tekavde for Defendant Nos.2(a) to 2(d) and 4(a) to 4(d).

CORAM : S.C. GUPTE, J.**2 DECEMBER 2015****P.C. :**

This chamber summons is taken out by original Defendant No.1 for deletion or striking off of certain paragraphs from the affidavit of Mrs.Preeti Shah (PW-1) in lieu of examination in chief. The chamber summons also seeks discarding of certain documents, which have been produced by this witness.

2 The application is on the footing that in her deposition, PW-1 has referred to certain documents addressed by original Defendant No.2 to the board of directors of the Plaintiff; and that PW 1 has produced these documents not only in proof of the existence and receipt of these documents, but also in proof of the truth and correctness of these documents. It is submitted, firstly, that the documents contain statements by a person, who is not before the Court and, therefore, ought not to be admitted in evidence in proof of the truth of their contents. Secondly, it is submitted that PW 1 is not in a position to depose to the truth of their contents. There is no merit in the application. The statements of

original Defendant No.2, who has since deceased, are relevant and admissible under Section 32 of the Evidence Act. The present suit seeks a joint and several decree against Defendant No.1 and the legal heirs of original Defendant No.2 (since deceased). The basis of the money decree is misappropriation of the property of the Plaintiff by the two Defendants in collusion. The documents, which are sought to be tendered through PW 1, are letters addressed by Defendant No.2 to the Plaintiff admitting misappropriation of money and explaining the circumstances in which Defendant No.2 purportedly committed the acts complained of in the suit. These statements are clearly against the pecuniary or proprietary interest of original Defendant No.2 and if true, would expose him to a suit for damages. The statements are clearly relevant and admissible in evidence under para (3) of Section 32. There is, therefore, no question of discarding these documents as either irrelevant or hearsay. As far as the eligibility or competence of PW-1 to depose to the truth of whatever is stated in these documents is concerned, that is clearly a matter of trial, to be elicited in the cross-examination of PW-1.

3 Learned Counsel for the Applicant relies upon a judgment of a learned Single Judge of this Court in the case of **Rajendra Singh Chhatrasal Singh Kushwaha vs. Jitendra Singh Rajendra Singh Kushwah**¹ in support of his contentions. The learned Single Judge in that case, which was a testamentary suit for probate of a will, held that the issues in the suit were limited to the execution of the will and the title in respect of the property was not relevant; and that the deposition of the defendant's witness setting up an adverse title was not relevant and could not be accepted in evidence. These facts are clearly distinguishable from the facts of our case. As observed above, in our case, the deposition contains relevant facts.

4 There is, thus, no merit in the chamber summons. The chamber summons is dismissed.

(S.C. Gupte, J.)

¹ 2013(6) Mh.L.J. 802