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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2017 OF 2015

IN

SUIT NO.2630 OF 2006

M/s. Golani Brothers ...Applicant/Plaintiff

vs

Display Arts And Anr. ...Defendants

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Mr. N.K. Mudnaney, for the Plaintiff.

Mr. Prathamesh Kamat, a/w. Mr. Siddhanth Chhabria, i/b. M/s. A. Mehta Lalji & Co., for the Defendants.

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CORAM : S.C. GUPTE, J.

DATED : DECEMBER, 9, 2015

P.C. :

. This Notice of Motion is taken out in pursuance of an order passed by this Court on 17 October 2015. The Plaintiff had originally tendered documents along with the affidavit of its witness in lieu of examination-in-chief. Upon an objection being raised as to the admission of these documents in evidence on the ground that the documents were neither mentioned in the plaint nor disclosed in the list of documents annexed thereto and also were not disclosed in any affidavit of documents, this Court adjourned the matter on 17 October 2015 to enable the Plaintiff to take further steps. By this Notice of Motion, the Plaintiff seeks leave to file an affidavit of documents together with the compilation. The application is opposed by learned Counsel for the Defendants on the ground that the Plaintiff was in possession of all these documents earlier and

despite such possession, failed to produce them along with the plaint or disclose them in the list annexed to the plaint; and that the Plaintiff has not made out any case explaining its failure to do so and making out grounds for leave to file these documents now. Learned Counsel relies upon a judgment of a learned Single Judge of this Court in **Coromandel International Ltd. m.v. GLORY I**¹ in support of his submissions.

2. The Plaintiff has, in its affidavit in support of the Notice of Motion, explained the circumstances in which the Plaintiff was prevented from referring to these documents earlier. The Plaintiff has also shown in the affidavit that the Plaintiff has already given inspection of all documents which were in its possession and power at the material time. The Plaintiff has explained the manner in which the proceedings have transpired in this matter in its affidavit. Considering all these circumstances, this is a fit case where leave should be granted to the Plaintiff to produce the documents sought to be produced. Though the trial has commenced in the sense that the Plaintiff has already filed its affidavit of evidence in lieu of examination-in-chief, considering the fact that these documents have already been offered for inspection to the Defendants and also the fact that the Defendants are not likely to suffer any prejudice as a result of allowing late production of these documents, it is in the interest of justice to permit the Plaintiff to produce the documents.

3. The affidavit of documents of the Plaintiff along with the compilation of documents is accordingly taken on record. Considering the fact that the affidavit of documents together with the compilation is now tendered and taken on record, the affidavit of evidence in lieu of

1 2015(1) Bom.C.R. 795

examination-in-chief of the Plaintiff's first witness is also taken on record. The suit shall now appear for marking of documents on 16 December 2015. The Notice of Motion is disposed of accordingly.

(S.C. GUPTE, J.)