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

NOTICE OF MOTION NO.1085 OF 2016
IN
SUIT NO.3330 OF 2007

Suresh Balkrishnan ….Applicant

IN THE MATTER BETWEEN :

ICICI Lombard General Insurance Co. Ltd. ….Plaintiff
V/s.
Mehru F.Daruwalla & Ors. ....Defendants

Mr.Vishwajit Sawant i/by Tuli & Co. for plaintiff.

Mr.Mayur Khandeparkar i/by M/s.Madekar & Co. for defendant nos.1, 1A, 1B, 1C & 1D.
Ms.Afreen Mukadam i/by Sakshi Khurana for defendant no.2-applicant in Notice of Motion.

CORAM : K.R.SHRIRAM,J
DATE : 2.5.2016

P.C.:-

1 This Notice of Motion has been taken out on behalf of defendant no.2 for rejection of the plaint under Order 7 Rule 11 (a) of the Code of Civil Procedure, 1908, on the basis of non disclosure of cause of action. A plaint has to be read as a whole. I have read the plaint. The basis of the plaint in the suit is that the erstwhile defendant no.1, who was carrying on business as a sole proprietor, Freddy Kaikushroo Daruwalla, was acting as insurance broker for the plaintiff. Defendant no.2 was an employee of defendant no.1. It is averred in the plaint that the

defendant no.1 rendered services, advice and guidance to the plaintiff through inter alia defendant no.2. Paragraph no.3 of the plaint reads as under :-

> *"Defendant No.2 is an Indian national and at the material time was functioning as the Senior Vice President of Defendant No.1 and Defendant No.1 rendered services, advice and guidance to the plaintiff through inter alia Defendant No.2. The plaintiff relies upon a similar case against Defendant No.1 and 2 and craves leave to rely upon each averment as if made against Defendant No.1 and 2 individually. Defendants No.1 and 2 are hereinafter referred to as the Defendant."*
>
> (emphasis supplied)

2 It is the case of the plaintiff that the defendants placed reinsurance covers with various reinsurances. The plaintiff for the policy issued by them, received certain claims which they settled but when the claim was made upon the reinsurers, the reinsurers rejected the claim. The plaintiff has also averred that in one case reinsurer by name Condor Insurance Company in fact, even went bankrupt and therefore, they were financially unsound and the claim of the plaintiff was not paid. It is alleged that the plaintiff relied on the skill and expertise of the defendants and it was the duty of the defendants to have seen to with that the reinsurer was financially sound.

3 Paragraph-17 of the plaint reads as under :-

> "By way of the present suit, the plaintiff seeks damages from the Defendant for its negligent acts,

errors and omissions in placing, arranging and handling the Reinsurance resulting in non-payment of monies under the contracts of Reinsurance. The Defendant was legally obliged to act with skill and care in discharge of its duties towards the plaintiff and in the facts the Defendant had an enhanced duty of care and skill given its professed expertise in placing reinsurance for first loss CPM policies. The Defendant is in breach of its ordinary duty of skill and care and such breach is aggravated given that the Defendant is to be judged according to the standard of work expected of a specialist professional possessed of that skill.”

4 Therefore, to say that there is no cause of action disclosed against defendant no.2 is incorrect. In the circumstances, Notice of Motion is dismissed.

5 Matter to be listed for issues after vacation. In the meanwhile, parties to file their respective affidavit of documents , complete discovery and inspection and file statement of admission and denial with reasons for denial.

(K.R.SHRIRAM,J)