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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1153 OF 2015
IN
SUIT NO. 395 OF 2007**

Saregama India Limited	...Applicant
<i>In the matter between</i>	
Anandji Virji Shah & 5 others	...Plaintiffs
<i>Versus</i>	
Ritesh Sidhwani & 5 others	...Defendants

Mr. Rajendra Jain, *i/b M/s. Thakore Jariwala, for the Applicant.*
Mr. Aasif Navadia, *with Ms. Ridhika Luthria, i/b Khimani & Associates, for the Plaintiffs.*
Mr. Ashok Singh, *i/b Mr. R.N. Gaonkar, for Defendant No. 3.*

CORAM: G.S. PATEL, J
DATED: 27th June 2016

ORAL ORDER:-

1. This is the 5th Defendant's Chamber Summons for leave to lead secondary evidence to prove certain documents. Such a Chamber Summons, it is well settled, is not maintainable.

2. *In Indian Overseas Bank v Trioka Textile Industries and Ors.*,¹ Vazifdar J (as he then was), held that such a Chamber

1 AIR 2007 Bom 24 : 2006 (6) Bom.C.R. 85

Summons is unnecessary, and is misconceived. It is neither necessary nor desirable. It is always open to the party to lead secondary evidence before the Judge recording evidence or hearing the matter without having to file such an application. He said:

2. A party desiring to lead secondary evidence must do so before the Judge recording the evidence. It is the Judge recording evidence who must decide, if any objection as raised, whether or not to admit the secondary evidence in evidence. If evidence is led before a Commissioner the objection to secondary evidence naturally can only be recorded and not decided by the Commissioner. It is then the Judge hearing the suit who decides the objection.

3. Therefore, if the 5th Defendant seeks to prove any documents in evidence and cannot do so by primary or direct evidence, he is always at liberty under the provisions of the Evidence Act to lead secondary evidence at the trial. No separate leave in a Chamber Summons is necessary or appropriate for this purpose.

4. The Chamber Summons is dismissed with these observations, keeping the 5th Defendant's rights and contentions expressly open in this regard.

5. List the Suit for marking the 5th Defendant's documents on Friday, 1st July 2016 on the supplementary board.

(G. S. PATEL, J.)