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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1205 OF 2016
IN
LEAVE PETITION NO. 295 OF 2015
IN
SUIT NO. 93 OF 2016

Black Ticket Films	<i>Versus</i>	...Plaintiffs
Walter Philip & Others		...Defendants

Ms. Mallika Taly, i/b Mr. Amir Arsimwala, for the Plaintiffs.
Mr. J.K. Mitra, i/b Mr. Virendra Kanojia, for the Defendants.

CORAM: G.S. PATEL, J
DATED: 6th October 2016

PC:-

1. The Defendants have filed this Notice of Motion seeking that leave under Clause 12 granted to the Plaintiffs be revoked. This will, in view of the decision of the Division Bench of this Court in *ICICI Limited, Mumbai v Sri Durga Bansal Fertilizers Limited & Others*,¹ have to be dealt with as preliminary issue under Section 9A of the Code of Civil Procedure, 1908. Accordingly, the following preliminary issues are framed:

1 1999(3) Mh.L.J. 20

- (a) Whether the leave granted by this Court under Clause 12 of the Letters Patent to the Plaintiffs is liable to be revoked?
- (b) If the answer to the aforesaid issue is in the affirmative and leave is revoked, whether the Suit is liable to be dismissed for want of jurisdiction or whether this Plaint is liable to be returned for being filed in an appropriate Court?

2. Ms. Taly i/b Mr. Arsiwala for the Plaintiffs submits that she proposes to lead evidence. Mr. Mitra for the Defendants states that this should not be permitted and it is always within the discretion of the Court to allow or not a party to lead evidence on a preliminary issue.

3. The Plaintiffs have invoked the jurisdiction of this Court on the basis that they apprehended that the Defendants would use the infringing mark to release a motion picture under a banner with that infringing mark in Mumbai. That motion picture has indeed been released though under a different banner/mark. Whether this is sufficient to warrant a revocation of the leave or not is not something that I can decide merely on the pleadings or filings as they stand. I have very little doubt that the Plaintiffs will need to explain what that apprehension was. Equally, the Defendants will need an opportunity to test that material. I do not see how the Defendants are in any way prejudiced by this. A refusal to permit evidence will undoubtedly prejudice the Plaintiffs. However, if that

evidence is led, Mr. Mitra will have the fullest latitude in cross-examining the Plaintiffs' witness. He will then have an opportunity to ascertain determinatively what precisely the apprehension and case of the Plaintiffs was at the time when the Suit was filed. There can be no clearer material than this in assessing the factual position.

4. Ms. Taly states that the Affidavit of Evidence, Affidavit of Documents and compilation will be filed and served on or before 17th October 2016.

5. List the matter for marking the Plaintiffs' documents on 19th October 2016.

6. I am making it clear that the Plaintiffs' evidence is to be limited to the preliminary issue. It is not to cover any of the other issues in the Suit since issues are not yet settled. The Plaintiffs will not be deemed to have given up their case on any of the other issues in the Suit merely because the Affidavit of Evidence in relation to the preliminary issue is limited or restricted.

7. The Notice of Motion is disposed of in these terms with no order as to costs. The Suit will be taken up separately for hearing on the preliminary issue.

(G. S. PATEL, J.)