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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS (L) NO.731 OF 2015
WITH
CHAMBER SUMMONS (L) NO.737 OF 2015
WITH
NOTICE OF MOTION NO.138 OF 2015
IN
SUIT NO.81 OF 2015

Aquafil Engineering GmbH	...Plaintiff
<i>Versus</i>	
Uhde India Pvt. Ltd. & Ors.	...Defendants

Mr. Ashwin Shankar, *for the Plaintiff.*
Mr. Ashish Kamath, *with Darshan Mehta, Naresh Chheda, Shreya Jha, i/b. M/s. Dhruve Liladhar for Defendant No.1.*
Mr. Ashish Kamath, *with Ranjit Shetty, Kunal Sampat, i/b. Argus Partners for Defendant No.2*
Mr. Ankit Lohia, *i/b. Kunal Damle for Defendant No.3.*

CORAM:	G.S. PATEL, J.
DATED:	31st March 2016

P.C.

1. I have before me two Chamber Summonses filed by Defendants Nos. 2 and 3. These seek inspection and copies of the documents referred to the Plaint as well as those referred to in the

Plaintiff's rather substantial Affidavit in Rejoinder dated 9th March 2015. There is some controversy already in the form of correspondence annexed to the Affidavit in Support of the Chamber Summons. There are counter allegations made in Affidavits tendered in reply to these two Chamber Summonses.

2. I do not see that any useful purpose would be served by getting into the details of these disputes or this correspondence. It does not seem to be disputed some inspection was demanded and that some documents were given for inspection. The dispute or disagreement is as to the nature of documents that were offered for inspection. Just by way of example, Defendants Nos. 2 and 3 contend that what they were offered in inspection was enlarged photocopies of certain drawings and not the original drawings themselves. In the correspondence that is annexed to the Affidavit in Support of the 2nd Defendant's Chamber Summons, there seems to have been an attempt by the Advocates for the Plaintiffs to set conditions and limitations to the inspection.

3. I do not think that under our procedure it is even remotely possible for Plaintiffs to say that they will not give inspection of the very material, documents, drawings etc. on which reliance is placed in the Plaint and in the Plaintiffs' Affidavits or which are referred to for the purposes of such reliance by Plaintiffs. Every party in litigation that chooses rely on any document must necessarily give inspection of it. If that party has only a copy, it must say so clearly. Where the document is an original, it is never sufficient to give inspection of only a copy.

4. On behalf of the Plaintiff a consolidated and colour-coded chart is tendered. For convenience I am taking this on record and marking it “X” for identification with today’s date. In the rest of this order, and for directions that follow, I will use the serial numbers that are mentioned in this chart.

5. The chart itself as has several columns. It sets out in columns Nos.5, 6, 7 and 8, the replies in correspondence by 2nd Defendant, the reply in correspondence by the 3rd Defendant, the claims in the 2nd Defendant’s Chamber Summons and the claims in the Chamber Summons of 3rd Defendant. I am not concerned with these. I am concerned with columns 2 and 3 which list, respectively, the exhibits and the status of the originals. I am also concerned whether inspection has or has not been offered till date. To put the matter to rest, I propose to issue directions fixing a date and a time for inspection, irrespective of what has or has not been given till date. This fresh inspection will therefore be not by agreement of parties or their Advocates but under directions of this Court.

6. As regards serial Nos. 2, 3, 5, 6, 12, 14, 18, 22, 33 and 34 of the chart, the Plaintiffs are directed to give inspection to the Defendants of the originals that are in their power or possession. In the case of drawings, it will not be acceptable to state that the original drawings are in PDF form. This cannot be. These are mechanical and electrical engineering drawings. At a minimum, even in digital form, they will be in a recognized design format for either the PC or the Mac platforms. Any PDF of a drawing is a copy, not a original. It is wholly irrelevant how these documents were communicated, whether in PDF or any other format. What is

required is the drawings and the documents in respect of which the Plaintiffs claim proprietary rights.

7. Having said that, there are possibly other documents amongst those listed above, such as the documents at serial numbers 12, 18, 22, 33 and 34, that might well be in PDF or other electronic format in the original. If so, inspection must be offered of the original and copies must be provided on request in both hard and soft formats.

8. As regards the documents at serial numbers 16, 28 and 30, it is noted that in this chart marked "X" the Plaintiff has admitted that it does not have the originals of any of these three documents. The Plaintiff will not be entitled to lead these documents in evidence without proof of the originals as permitted under our Evidence Act.

9. As regards the remaining documents I do not believe that an order for inspection is necessary. Some of this is third party or public domain material. Other items pertain to correspondence between the parties. Some other items as such those at serial numbers 24 and 26 are copies of electronic presentations.

10. By specifying certain items on this chart, it is not being suggested that the inspection must be limited only to those items. It is clarified that the items listed above are those in respect of which inspection of the originals is required. The other items such as, for example, those at serial numbers 25, 26 and 27 may be furnished in copies if required by the Defendants and for which the Defendants

will be entitled to make a request in writing. Inspection of those items is not compelled but is left to the discretion of the Defendants.

11. It will be open for the Defendants to contend at any stage after inspection is complete that for want of inspection and production of the originals, the Suit itself should be dismissed. All contentions in that behalf on both sides are expressly kept open. Those contentions and rights will remain unaffected by the present order directing inspection.

12. Inspection is to be given at the offices of the Advocates for the Plaintiffs on 20th and 21st April 2016, from 5.30 pm onwards. It is also clarified that it will be left open to both sides to raise their respective contentions regarding whether any particular document is or is not an “original”. It also goes without saying that in order to avoid all further controversy, the Plaintiffs will keep separately available the originals of all documents offered for inspection pursuant to this order for later use of the Court.

13. Both the Chamber Summonses are disposed of in these terms with no order as to costs.

14. List the Notice of Motion No.138 of 2015 for directions on 13th June 2016.

(G. S. PATEL, J.)