

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****COMMERCIAL APPEAL (L) NO. 410 OF 2016****IN****CHAMBER SUMMONS NO. 1606 OF 2016****IN****SUMMARY SUIT NO. 2879 OF 2004****WITH****NOTICE OF MOTION (L) NO. 3178 OF 2016****IN****COMMERCIAL APPEAL (L) NO. 410 OF 2016**

Mr. Rajendra Kumar Banthia & Anr. .. Appellants
versus
Mansarovar Investment Limited & Anr. .. Respondents

Mr. Piyush Raheja with Mr. Jayesh M. i/b. RMG Law Associates for Appellants.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.**

DATE : 22 DECEMBER 2016

P.C.:

1] Heard learned counsel for the appellants.

2] The appellants are before us being aggrieved by order dated 15th October 2016 in dismissing chamber summons no. 1606 of 2016 in summary suit no. 2879 of 2004. Exhibit 'P-1' is the affidavit in lieu of examination-in-chief filed on behalf of the plaintiff. The said affidavit was already taken on record as evidence of the plaintiff when the present chamber summons came to be filed. The learned Judge was justified in opining that if any portion of the affidavit filed in lieu of examination-in-chief was to be objected to, the same ought to have

been objected to by the appellants / defendants at the time of accepting the same as evidence (examination-in-chief). According to the appellants, certain portions in the affidavit at Exhibit 'P-1' go beyond the pleadings with regard to the *mala fides* alleged against the Directors (appellants) but the learned Judge dismissed the chamber summons. According to the appellants, an amendment application came to be filed to amend the pleadings to add certain averments with regard to the *mala fides* of the directors, which came to be rejected. When an appeal is filed against dismissal of such amendment application, the same came to be withdrawn unconditionally. If this is so, it is very much within the power of the appellants/ defendants to cross-examine the plaintiff on this issue and further the learned Judge has not foreclosed to raise such contention at the time of final arguments as well.

3] In that view of the matter, we decline to intervene, at this stage. Accordingly, the appeal is dismissed.

4] In view of dismissal of the appeal, notice of motion does not survive and is disposed of accordingly.

CHIEF JUSTICE

(M. S. SONAK, J.)