

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1950 OF 2015**

IN

SUIT NO.236 OF 2014

Adi Burjor Banajee	...	Applicant
and		
Adi Burjor Banajee and Ors.	...	Plaintiffs
Versus		
Bakhtawar Maneksha Jijina	...	Defendant

WITH

NOTICE OF MOTION NO.2042 OF 2015

IN

SUIT NO.236 OF 2014

Adi Burjor Banajee and Ors.	...	Plaintiffs
Versus		
Bakhtawar Maneksha Jijina	...	Defendant/Applicant

Mr. Karl Tamboly with Ms. Shireen Pochkhanawalla i/by M/s. Mulla and Mulla and Craigie Blunt and Caroe, for Plaintiffs.

Ms. S. Khobragade i/by Mr. R.P.Khobragade, for Defendant.

CORAM: S.J. KATHAWALLA, J.

DATE: 1st FEBRUARY, 2016

P.C.:

1. In so far as Notice of Motion No.2042 of 2015 is concerned, the following additional issue is framed in this Suit :

(i) Whether the Defendant proves that the Suit as filed, is not maintainable for the reasons set out by the Defendant in her Written Statement ?

2. In so far as Notice of Motion No.1950 of 2015 is concerned, it is the Plaintiff's case that the Defendant has after the evidence of the Plaintiffs as well as the

Defendant, was concluded, addressed a letter dated 31-07-2015, wherein the Plaintiffs have been referred to as the Landlords. Subsequent thereto, the Defendant has also acted upon the said letter and has issued cheques to the Plaintiffs dated 08-12-2015 and 01-02-2016. The Plaintiffs are therefore, desirous of reopening the case and leading the evidence of Plaintiff No.1 and one Mr. Adi Mehta, only since in the Affidavit in Reply to the Notice of Motion the Defendant has contended that the said letter was written by her under undue influence and at the instance of Mr. Adi Mehta.

3. The learned Advocate for the Plaintiffs has relied on the decision of the Supreme Court in the case of K.K.Velusamy V/s. N. Palanisamy,¹ more particularly paragraph Nos.11 and 14 which are reproduced hereunder :

"11. There is no specific provision in the Code enabling the parties to reopen the evidence for the purpose of further examination-in-chief or cross-examination. Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Court. In the absence of any provision providing for reopening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by the Court, the inherent power under Section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to reopen the evidence and/or recall witnesses for further examination. This inherent power of the Court is not affected by

¹ (2011) 11 SCC 275

the express power conferred upon the Court under Order 18 Rule 17 of the Code to recall any witness to enable the Court to put such question to elicit any clarifications.

14. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was necessary to have an express provision for reopening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands or earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose."

4. The learned Advocate for the Defendant has opposed the Notice of Motion on two counts. The first opposition being that if the Plaintiffs are allowed to reopen their case, they might lead evidence and cover the issues which they have failed to deal with earlier.

5. As far as this objection is concerned, it is clarified that the Plaintiffs shall be allowed to lead evidence only as regards the letter dated 31-07-2015 and the cheques issued by the Defendant dated 08-12-2015 and 01-02-2016, the evidence of

Mr. Adi Mehta pertaining to the said letter dated 31-07-2015 and the allegations made against him by the Defendant namely that the said letter was issued by the Defendant at his instance under undue influence.

6. The next contention of the Defendant is that the same will delay the matter. This can also be taken care of by directing the Plaintiffs to file further evidence of Plaintiff No.1 as well as Mr. Adi Mehta on or before 05-02-2016. In view thereof, the following order is passed :

(i) The Plaintiffs are allowed to reopen their case as prayed for.

(ii) The Plaintiffs are allowed to file Affidavits of Evidence of Plaintiff No.1 as well as Mr. Adi Mehta only to the limited extent as set out hereinabove on or before 05-02-2016.

(iii) The Suit is placed for marking of documents and cross-examination of the witnesses on 08-02-2016 at 3.00 p.m. The Court is willing to place the matter for cross-examination on 08-02-2016. However, at the request of the learned Advocate for the Defendant, the same is posted to 25-02-2016 at 3.00 p.m.

(iv) All contentions of the parties are kept open.

(v) The above Notices of Motion are accordingly disposed of.

(S.J.KATHAWALLA, J.)