

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 251 OF 2017
WITH
CIVIL APPLICATION NO. 334 OF 2017

AM Automobiles, through its Prop Abish Kumar Das ...Appellant

Versus

Spartan Engineering Pvt Ltd ...Respondent

Mr Debasis Mitra, i/b Legal Assistance, for the Appellant.

CORAM: G.S. PATEL, J
DATED: 3rd July 2017

PC:-

1. It is not possible to sustain the order dated 27th January 2017. In a Summary Suit, the Defendant was granted unconditional leave to defend. The Defendant then sought leave to file a Chamber Summons under Order VII Rule 10 seeking that the plaint be returned for presentation to the proper Court. The learned Judge refused leave on the basis that the written statement was awaited and the issue of jurisdiction could be taken in the written statement.
2. The pendency of the Written Statement cannot stop a party from filing a Chamber Summons seeking a return of the plaint for

presentation to the proper Court. If the Chamber Summons succeeds, there is no question of filing a Written Statement at all. To say that the plea of jurisdiction should await the Written Statement is to say that it should await the trial and the final judgment. That is not the purport or ambit of Order VII Rule 10(1) itself says that a return of plaint can be done at any stage. That is certainly no reason to await an expensive trial, if it is ultimately found on the Chamber Summons that the plaint must be returned.

3. The impugned order is set aside. The Defendant has already lodged Chamber Summons under Order 7 Rule 10 in the Registry of the City Civil Court. It will be numbered on or before 7th July 2017.

4. The learned Advocate for the Appellant will then appear before the learned Judge of the Trial Court on 11th July 2017 and obtain necessary directions for filing of Replies and Rejoinders and for fixing the date of hearing.

5. The Appeal from Order and the Civil Application are disposed of in these terms with no order as to costs.

6. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J)