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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 282 OF 2017
IN
SUIT (L) NO. 78 OF 2017
WITH
CHAMBER SUMMONS (L) NO. 517 OF 2017**

The Bhaktivedanta Book Trust ...Plaintiff
versus
Thomson Press (India) Ltd & Anr ...Defendants

**Dr Veerendra Tulzapurkar, Senior Advocate, with Vinod Bhagat,
Dhiren Karania, Nalanda Jadhav & Ruchi Agarwal, for the
Plaintiff & Applicant in CHSL/517/2017.**

**Mr Pradeep Diwan, Senior Advocate, with Rashmin Khandekar,
Ajay Garg, Ashutosh Kane & Anusha Ramanathan, i/b WS
Kane & Co., for Defendant No. 2.**

**CORAM: G.S. PATEL, J
DATED: 25th April 2017**

PC:-

1. Dr Tulzapurkar for the Plaintiff candidly points out that there are several errors in the plaint. The Plaintiff is a Trust registered in India. According to the Plaintiff, there is a sister Trust registered in the United States. The works in question that the Plaintiff seeks to protect here, and to which it claims copyright are also the very

works to which the United States non-profit entity also claims copyright. According to the Plaintiff in India, each Trust exploited that copyright within its own jurisdiction.

2. This formulation is strongly contested by the Defendant No. 2 (Defendant No. 1 is only the printer), on whose behalf Mr Diwan says that the Indian Trust, the Plaintiff, only has printing rights; that the copyright vests entirely in the United States Trust.

3. From the 2nd Defendant is concerned, this is less than helpful. Mr Diwan has argued at some length that the 2nd Defendant has for some time been printing copies of the works in question. The 2nd Defendant claims to have acquired some kind of rights from one Krishna Books Inc (“**KBI**”), another California-based non-profit. The only document in favour of Pristine Traders is a letter at page 58 of the Notice of Motion paper-book. This is dated 22nd February 2017 and is clearly issued with specific reference to the present suit. There is no document which shows that the 2nd Defendant, a Hong Kong-based entity, ever had a license or an assignment either from the US Trust or from any assignee or licensee of the US Trust. I am unable to accept *prima facie* the submission that no such license or assignment is at all necessary.

4. What is even more puzzling is that these arguments are not taken only in opposition to the Notice of Motion on merits, which I cannot consider in any case till I decide the application for amendment, but also to the amendments proposed in the Chamber Summons. The suggestion is that I should summarily reject the

amendments and go one step further and dismiss the Suit as not maintainable without any further enquiry.

5. I am unable to do anything of the sort. Indeed it seems to me that the Chamber Summons on any principle governing the grant or refusal of amendments will have to be allowed. No Written Statement has yet been filed and we are at a very great distance from the trial of the Suit. The Chamber Summons not only seeks to clarify the Plaintiff's position, but more importantly seeks to delete registrations to which the Plaintiff first laid claim, only to realize later that these were registrations stood to the name of its US-based sister Trust. Seen thus, the opposition is curious. The Plaintiff says that it came to Court with a plaint that said too much, not too little. It is not accused of suppression, but of exaggeration. It seeks to trim its plaint to something more modest, not make it more expansive.

6. These are the amendments, I am told, I should disallow; and I should do so at the instance of a party who claims only that since it has been printing the works in question for a long time, a matter yet to be tested, the Plaintiff should be held to have no rights at all.

7. I can see no reason either in logic or equity that would persuade me to accept such an opposition.

8. The Chamber Summons itself will have to be made absolute in terms of prayer clause (a). From the Schedule of amendments, items A(xii) and B(ii) are deleted. There will be no amendment to

the Affidavit in Support of the Notice of Motion, as that cannot be done. A fresh Supporting Affidavit may be filed.

9. Amendment to be carried out on or before 2nd May 2017. A copy of the amended plaint will be served on the 1st Defendant and the Advocates for the 2nd Defendant.

10. This amendment is entirely without prejudice to the rival rights and contentions, all of which are specifically kept open.

11. Since the amendments proposed and allowed are also to the Notice of Motion, these Defendants will be entitled to file and serve a further Affidavit in Reply on or before 9th June 2017. There is already an existing Rejoinder from pages 59 to 75. Any further Reply will be filed with proper paging following these numbering. An Affidavit in Rejoinder may be filed and served on or before 16th June 2017.

12. List the Notice of Motion peremptorily for hearing and final disposal on 22nd June 2017 at 3.00 p.m.

13. In the meantime, the previous ad-interim order dated 8th February 2017 will continue.

(G. S. PATEL, J.)