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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

NOTICE OF MOTION NO. 1246 OF 2016
IN
COMMERCIAL SUIT NO.14 OF 2004
WITH
COMMERCIAL SUIT NO. 14 OF 2004

Kotak Mahindra Investments Ltd. ...Applicant/Plaintiff
VS
LKP Securities Ltd. & Anr. ...Defendants

.....
Mr Nikhil Rajani i/b V. Deshpande & Co. for the Applicant/
Plaintiff
Ms Dimple Majithia i/b M/s Agrawal Partners for the
Defendants.

.....
CORAM : **B.P.COLABAWALLA, J.**
OCTOBER 30, 2017.

P.C. :

By an order dated 25th August, 2006, passed by another Single Judge of this Court (**S.J.Vazifdar, J.** as he then was) in Suit No. 492 of 1983 (**Indian Overseas Bank Vs. Trioka Textile Industries & Ors.**) it has been held that an application seeking leave to lead secondary evidence is not necessary and that a party desiring to lead secondary evidence

must do so before the Judge recording the evidence and it is that Judge who must decide whether or not to admit the secondary evidence in evidence. In view of this decision, the learned advocate appearing on behalf of the Plaintiff seeks leave to withdraw this Notice of Motion with liberty to take aforesaid contentions with reference to leading secondary evidence in the affidavit of evidence which he propose to file of his second witness. The Notice of Motion is, therefore, dismissed as withdrawn with liberty as prayed.

2 As far as the suit is concerned, learned advocate appearing on behalf of the Plaintiff seeks time to file an affidavit of evidence of his second witness. The advocate for the Defendants have no objection.

3 In view of the aforesaid request, place the suit for directions on 27th November, 2017.

(B. P. COLABAWALLA, J.)