

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.204 OF 2016

IN

COMMERCIAL SUMMARY SUIT NO.9 OF 2005

Inco Mechel Pvt.Ltd.	... Applicant
and	
Inco Mechel Pvt.Ltd.	... Plaintiff
v/s	
Brunswick bowling and billiards (UK)	
Ltd. and another	... Defendants

Mr Harsh Desai i/b Mr Deepak Jamsandekar for Plaintiff.
 Mr Ronak Desai with Mr Mohit K. i/b Mr Madhur Baya for Defendant No.1.
 Mr Dinesh Pednekar with Ms Mihika Jalan i/b Mr Naresh C. Thacker for Defendant No.2.

CORAM : B.P. COLABAWALLA, J.

DATE : OCTOBER 5, 2017

P.C.:

1. This Notice of Motion has been filed by the Plaintiff seeking return of the plaint under the provisions of Order 7 Rule 10 of CPC with liberty to present the same in this Court once again after obtaining leave under clause XII of Letters Patent. Mr Desai, learned counsel appearing on behalf of the Plaintiff submitted that leave

under clause XII of Letters Patent is required for the purpose of filing the present Suit. The necessary submissions for obtaining leave under clause XII of the Letters Patent were made in the plaint by the erstwhile Advocate for the Plaintiff in paragraph 11 of the plaint. The Plaintiff was all throughout under the belief that necessary leave as submitted in the plaint was duly obtained prior to filing the present Suit. However, upon receipt of the affidavit in reply to the Summons for Judgment disputing the jurisdiction of this Hon'ble Court, the Director of the Plaintiff had caused inspection of the papers and proceedings to be taken when it was found that there was no record relating to the application for grant of leave under clause XII of the Letters Patent.

2. In support of this proposition, Mr Desai relied upon the judgment in the case of Rhoda Jal Mehta and others v/s Homi Framroze Mehta and others, reported in AIR 1989 Bombay 359. Relying upon the aforesaid decision, he submitted that the plaint be returned under Order 7 Rule 10 of CPC and liberty be granted to file the Suit on the same cause of action after obtaining leave under clause 12 of the Letters Patent.

3. Mr Pednekar, learned counsel appearing on behalf of Defendant No.2 opposed this prayer on the ground that the plaint cannot be returned under Order 7 Rule 10 of CPC as the same is specifically excluded under Order 49 Rule 3 of CPC in so far as it applies to Chartered High Courts. In this regard, to further fortify this submission, Mr Pednekar relied upon an unreported decision (G.S. Patel J.) dated 27th January 2017 in Leave Petition No.5 of 2016 in Suit No.3079 of 2006 (Hindustan Organic Chemicals Ltd. v/s ICI India Ltd.).

4. I find that while going through this decision dated 27th January 2017, in paragraph 6, this Court has observed that clause XII itself contains no provision for return of the plaint nor is there any corresponding provisions in our High Court (O.S.) Rules which, admittedly prevail over the CPC. The choice before the Chartered High Court is therefore limited to either reject the plaint under Order 7 Rules 11(a) or 11(d) or to allow the Suit to be withdrawn with or without liberty to file a fresh Suit on the same cause of action. On going through this decision, Mr Desai submitted that if the Suit is

dismissed as withdrawn with liberty to refile on the same cause of action after obtaining leave under clause XII of the Letters Patent, the same would also serve his purpose.

5. I think the stand taken by Mr Desai is fair one. IN this view of the matter, the Plaintiff is allowed withdraw the Suit with liberty to file a fresh Suit on the same cause of action after obtaining leave under clause XII of the Letters Patent. Needless to state that all objections for filing the fresh Suit regarding limitation or any other objections are kept open to be agitated by the Defendants. Notice of Motion and the Suit are disposed off in the aforesaid terms. There shall be no order as to costs.

(B.P. COLABAWALLA, J.)