

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

NOTICE OF MOTION NO.1409 OF 2016

IN

SUIT NO.3085 OF 1985

Hotel Empire Limited ... Plaintiff

Versus

Juhu Beach Resorts Pvt. Ltd. And Others ... Defendants

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Mr. K.R. Bulchandani a/w Avik Sarkar and Amit Nikam i/b S.M. Kazi for the Applicant/Plaintiff.

Mr. F.E. Devitre, Senior Advocate a/w Mr. Rajesh Shah And Ms Hemlata Jain i/b Maneksha & Sethna for Defendant Nos.1, 2 and 3.

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CORAM : S.C.GUPTE, J.

DATE : 14 JULY 2017

P.C. :

. Heard learned Counsel for the parties. This Notice of Motion is taken out by original Plaintiff, praying for issue of witness summons to the witnesses set out in paragraph-16 of the affidavit in support of the Notice of Motion. After the matter is heard at some length, it is apparent and not disputed by either of the parties that the controversy in the present Notice of Motion boils down only to three aspects. Firstly, it is claimed by the Applicant/Plaintiff that signatures on the documents produced in evidence by Defendant No.1 are disputed and in the premises, the Plaintiff is entitled to issue witness summons to those of the directors and officers of Defendant No.1, whose signatures appear on the documents. The second aspect concerns the document which is admitted in evidence as Exhibit P-34, subject to the objection of Defendant No.1, for the proof of which

document and so as to get over the objection of Defendant No.1 over which, the Plaintiff wants to examine Mr. Chandru L.Raheja, presently, director of Defendant No.1. The third aspect is the document at Exhibit P-41, which is also admitted in evidence, subject to the objection of Defendant No.1, and to prove which, the Plaintiffs prays for witness summons against Mr. Chandru L. Raheja. Other than these three aspects, the other matters forming part of the present Notice of Motion are not pressed by the Plaintiff.

2 Insofar as signatures on the documents referred to by the Plaintiff's Counsel are concerned, Mr. Devitre, learned Senior Counsel appearing for Defendant No.1, makes it clear that Defendant No.1 has not objected the documents of Defendant No.1 produced by the Plaintiff on the ground that the signatures are not proved or are disputed. (Mr. Devitre makes an exception of documents at P-4, P-31, P-41, and P-103, the existence of which is denied by Defendant No.1) Learned Counsel for the Plaintiff is unable to point out a single document signed by the director/officer of Defendant No.1, which is objected to on the ground of want of proof of signature. In the circumstances, there is no need to call any of the signatories to these documents for proof of signatures.

3 Insofar as the document at Exhibit P-34 is concerned, it is an unsigned letter purportedly from the shareholders and directors of Hotel Empire Ltd addressed to Juhu Beach Resorts Pvt. Ltd. The existence of this document itself is disputed by Defendant No.1. It is apparent that this document, assuming that it exists, pertains to the period prior to the present management of Defendant No.1, represented by Rahejas, coming

on the scene. There is nothing on record to show that any of Rahejas or their officers is either party or privy to this document. In the premises, there is no case for issuance of any witness summons to Chandru L. Raheja for proving this document. Learned Counsel for the Plaintiff submits that he has produced other evidence in proof of this document. If that is so, so be it. There is no case for calling Chandru L. Raheja.

4 Insofar as Exhibit 41 is concerned, it is an unsigned agreement dated 16 January 1978 between Juhu Beach Resorts Pvt. Ltd on the one hand and Chandru L. Raheja, Suresh L. Raheja and Kishore L. Raheja on the other. The existence of this document is also denied by Defendant No.1. The document contains an endorsement that it is a draft agreement dated 16 January 1978 between JBR and Chandru Raheja and 2 others. Besides, the document has various blanks. By all account, it appears to be just a draft. There is nothing on record to show that Chandru L. Raheja was either party or privy to this document. In the face of a denial by Defendant No.1 and its directors, there is no case for issuance of witness summons to Chandru L. Raheja for proving this document at the instance of the Plaintiff. Mr. Bulchandani, learned Counsel appearing for the Plaintiff, refers to a resolution of Board of Directors, which appears to have been referred to in the execution clause of this draft. Mr. Buchandani submits that this shows that there is actually a resolution of 12 January 1978 passed by Defendant No.1 to which the Rahejas were parties, for execution of this draft. Once again, there is nothing to show that this purported resolution of 12 January 1978 was either actually passed or that it was passed for execution of an agreement in terms of the draft which is at Exhibit P-41. Mr. Bulchandani submits that he has already produced evidence to prove the document at

Exhibit P-41. Anyway, it is a matter for the Trial court to decide at the hearing of the suit and I need not express any opinion on the same. My observations above concerning the Rahejas being party or privy to the document at Exhibit 41 or the existence of the resolution of 12 January 1978 are merely with a view to decide the present application for issuance of witness summons to Chandru L. Raheja.

5 It is made clear that this order shall not prejudice any application made by the Plaintiff later in the suit for issuance of witness summons to Mr. Vasu Bijlani or Government/Revenue Officials, being item Nos.11 and 12 in the list of witnesses furnished across the Bar at the hearing of the Notice of Motion. Needles to add that this order shall not prejudice any application that may be made by the Plaintiff for issuance of witness summons to any other witness, if permissible in law.

6 In the premises, none of the prayers in the Notice of Motion can be granted. Notice of Motion is, accordingly, dismissed.

7 Costs to be costs in the cause.

(S.C. GUPTE, J.)