

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 221 OF 2016
IN
SUIT NO. 893 OF 2004

M/s. P.H. Jain	...Applicant
In the matter between	
M/s. P.H. Jain	...Plaintiff
Versus	
M/s. Sasangi Engineering (Bombay) Pvt. Ltd.	...Defendant

Mr. Chetan Yadav, i/b Ram & Co., for the Plaintiff.
Mr. U. J. Makhija, a/w Ms. Nidhi V. Singh & Ms. Anita Khanna, i/b Legasis Partners, for the Defendant.
Ms. J.M. Sidhwar, Former Commissioner and Mr. Salil Shah, Present Commissioner present.

CORAM: K.K. TATED, J
DATED: 6th September 2017

PC:-

1. Heard learned Counsels for the parties. The present Chamber Summons is preferred by Plaintiff allowing them to lead secondary evidence in respect of the documents at Sr. Nos.8, 9, 10, 14 and 27 of compilation of documents filed by Plaintiff on 8th November, 2014.
2. The learned Counsel for the Plaintiff submits that documents at Sr.No.9 that is construction and equipment

order dated 21st February, 2001 for bowling is the photocopy of the original. He submits that the original copy was handed over to one Lotus Enterprises. Therefore it is not possible for them to place on record the original copy of the same. He further submits that deponent of Affidavit in examination-in-chief dated 8th November, 2014 is the signatory of the said documents. To that effect the learned Counsel for the Plaintiff rely on paragraph 11 of the said Affidavit in examination-in-chief dated 8th November, 2014. He submits that in view of this fact and the reasons described in paragraph 11 of the said Affidavit, Plaintiff be permitted to place on record the document at Sr. No.9. Considering these facts same be allowed. This constructions and equipment order dated 23rd February, 2011 be taken on record and mark as Exhibit "P-27".

3. The learned Counsel appearing on behalf of the Defendant opposed for marking the said document as exhibit. He submits that this Court after consideration the submissions made by the parties, by order dated 7th January, 2015 (Coram: K.R. Shriram, J.) taken on record, but same was marked as "X4" for identification only. He further submits that the Plaintiff had not followed procedure as prescribed under Section 65 of the Evidence Act. Hence there is no question of marking said document as exhibit. He further submits that if this Court comes to the conclusion that the Plaintiff has made out case for marking the said document as exhibit, then all contentions

be kept open.

4. Considering the submissions made by learned Counsel for the Plaintiff, paragraph 11 of the Affidavit in examination-in-chief of Plaintiff and as the deponent in the signatory to the document at Sr.No.9, I satisfied that Plaintiff has made out case allowing them to lead secondary evidence and said document can be marked as Exhibit "P-27" with liberty to the Defendant to cross-examine the Plaintiff's witnesses in respect of the said document. Hence document at Sr.No.9, construction and equipment order dated 21st November, 2001, is taken on record and marked Exhibit "P-27".

5. The learned Counsel Mr. Yadav for the Plaintiff submits that document at Sr.No.10, copy of invoice issued by Brunswick Bowling and Billiards (U.K.) Limited be taken on record and mark as Exhibit "P-28". He submits that the equipments purchased by them from Brunswick sold by them to Lotus Enterprises. At that time they handed over original documents to Lotus Enterprises. In support of this contention he rely upon paragraph 11 of Affidavit in examination-in-chief of Plaintiff dated 8th November, 2014. He further submits that they contacted Lotus Enterprises for original. At that time, the Lotus Enterprises by the letter dated 27th September, 2016 informed to the Plaintiff that they sold equipments in the year 2007 and handed over all original documents to the purchaser. Hence it is not

possible for them to hand over the original documents. He submits that these facts were stated by them in their additional Affidavits dated 11th January, 2017. He submits that in view of this fact Plaintiff may be allowed to place on record the said invoice dated 10th April, 2001 and be marked as Exhibit "P-28".

6. On the other hand, the learned Counsel appearing on behalf of the Defendant vehemently opposed for marking the said documents as Exhibit "P-28". He submits that the Plaintiff's letter dated 24th September, 2016 from Lotus Enterprises is issued during the pendency of present Chamber Summons and filing of their Affidavit in reply. Therefore there is no question allowing the Plaintiff to lead secondary evidence in respect of the said document.

7. I heard both sides at length. It is to be noted that as required by Section 65 of the Act Applicant/Plaintiff completed the said procedure that is stated all those facts on solemn affirmation as also called upon the person to whom that handed over the original documents. Lotus Enterprises, purchaser of those equipment, by the letter dated 23rd September, 2017 stated that they already sold those equipments in the year 2007 to third party and handed over the original documents to the purchaser. Considering these facts and as the deponent was the Director at relevant time when they received the invoice dated 10th April, 2001, I satisfied that Applicant/Plaintiff

has made out case for allowing them to place on record the photocopy of commercial invoice No.300152 dated 10th April, 2001. Hence said document is taken on record and marked as Exhibit “P-28” with liberty to cross-examine the deponent if so desire.

8. In view of these facts Chamber Summons stands disposed of.

[K. K. TATED, J.]