

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1520 OF 2016
IN
SUIT NO. 3598 OF 1996
WITH
NOTICE OF MOTION NO. 1228 OF 2016
AND
NOTICE OF MOTION NO. 2756 OF 2016
AND
NOTICE OF MOTION NO. 1696 OF 2016
AND
COUNTER-CLAIM NO. 10 OF 2016**

Harish Loyalka & Another	...Plaintiffs
<i>Versus</i>	
Dileep Nevatia & 4 Others	...Defendants

Mr. Gaurav Joshi, Senior Advocate, with Mr. Avinash Joshi, Ms. Neeta Jain, & Mr. Vilup Bilve, i/b Mulla & Mulla, for the Plaintiffs.

Mr. Dileep Nevatia, Defendant No. 1 in person & Applicant in all CHS & NMS & Plaintiff in Counter-claim.

Mr. B.K. Bali, i/b Bali Associates, for Defendant No. 5.

**CORAM: G.S. PATEL, J
DATED: 10th January 2017**

PC:-

CHAMBER SUMMONS NO. 1520 OF 2016

1. Although Chamber Summons No. 1520 of 2016 is listed for directions, by consent, the same is taken up for hearing and final disposal.

2. Heard. The Chamber Summons is filed by Mr. Dileep Nevatia, Defendant No. 1. He seeks that summons be issued to the two witnesses to produce documents set out in Schedule “A” and Schedule “B” to the Chamber Summons. The first of the witnesses is one Mr. P.R. Vishwanathan. It seems that Mr. Vishwanathan’s son was a person who was summoned to produce a document. Now Mr. Nevatia seeks to have his father produce another document dated 14th July 1954 said to have been executed by him and Mr. Nevatia’s father. The person to whom the summons is proposed to be issued, Mr. P.R. Vishwanathan, is 90 years old. This is a matter of some concern. Mr. Nevatia will make enquiries about his state of health. I will then issue directions to the Commissioner for taking the cross-examination of Mr. P.R. Vishwanathan *de bene esse* at his residence.

3. Schedule “B” to the Chamber Summons is itself in two parts, “A” and “B”. This requires some explanation. Mr. Nevatia was himself cross-examined and his cross-examination was concluded some time towards the end of 2014. Relevant to this discussion is the fact that Mr. Nevatia has also filed a counter-claim and that is being tried along with the Suit. Parties are agreed that the evidence

is common. Obviously, there are reliefs sought in the counter-claim including in mesne profits or royalty which are beyond the Written Statement itself.

4. In the course of his cross-examination, Mr. Nevatis was called upon to produce certain documents. By and large these were in the nature of copies of orders of Customs Authorities which, Mr. Nevatia said, prevented him from surrendering certain premises. At that time he was unable to produce those orders. He was also asked on 19th August 2014 in Question No. 252 whether he had any record to show that his company vacated the premises in question in the year 2000. At that time, Mr. Nevatia said that he found a soft copy of a letter dated 10th May 2000 from his company to one Elegant Industries Private Limited. He clearly said that he was in the process of tracing a hard copy of this letter.

5. As it happens, Mr. Nevatia was not able to produce these documents till the end of his cross-examination. Immediately after his cross-examination was complete, Mr. Nevatia, having by then found the necessary documents, supplied copies to the Advocates for the Plaintiffs. Thereafter, further witnesses' evidence was led.

6. Part "A" of Schedule "B" lists 20 documents. Serial Nos. 6, 10, 13, 15(b), 16 and 18 are all orders or in the nature of orders and about which Mr. Nevatia was asked questions. The others, he claims, are documents that show why he was unable to surrender possession of the premises in question.

7. Part “B” of Schedule “B” is in respect of the claim for royalty or mesne profits. The documents at Serial Nos. 21 to 23 are certified copies of leave and license agreements obtained from the Sub Registrar of Assurances. The documents at Serial Nos. 24, 25 and 29 are documents prepared by Mr. Nevatia’s son Karan, who he proposes to call as a witness. The documents at Serial Nos. 26, 27 and 28 are documents downloaded from the official websites.

8. I am not at this stage marking any of these documents. There is no Affidavit of Evidence in support of these documents before me. The documents will necessarily need to be compiled. I propose to allow Mr. Nevatia the liberty of filing a supplementary Affidavit and of recalling himself as a witness. I do so for two reasons. The first is to ensure that the evidence is complete as possible and that there is no opportunity raised to make a claim for an adverse inference when documents are in fact available. The second is, evidently, because there is a counter-claim and Mr. Nevatia is always entitled to lead evidence in support of his counter-claim in addition to the evidence in opposition to the Suit. The result actually would be the same. If the two are separated, he could always file a further Affidavit of Evidence in support of his reliefs in the counter-claim. I believe it would be best to combine these. I do however make it clear that Mr. Nevatia is not going to be permitted endless latitude in this fashion and in fairness he confirms that he has no further documents that he wishes to lead hereafter.

9. As regards the documents in Part “A” of Schedule “B” and the documents at Serial Nos. 21, 22 and 23 of Part “B” of Schedule “B”, Mr. Nevatia will be entitled to file a further Affidavit of

Evidence and compilation. This is to be done on or before 30th January 2017. In respect of the documents at Serial Nos. 24, 25 and 29, these will be introduced through the Affidavit of Evidence of Mr. Karan Nevatia. The documents at Serial Nos. 26, 27 and 28 will be allowed to be produced through the relevant witnesses in question for proof of correctness of contents.

10. The Affidavits of Mr. Karan Nevatia and the summons to the other witnesses will be issued at a later date.

11. The sequence of cross-examination is as follows: Mr. Vishwanathan will be taken first as witness for production of the original agreement dated 14th July 1954 along with three certified true copies. Thereafter, the Additional Affidavit to be filed by Mr. Nevatia will be taken up for admission, denial and marking of documents followed by his cross-examination on final recall. Then will follow the evidence of Mr. Karan Nevatia and finally the evidence of the witnesses required to prove the documents at Serial Nos. 26 to 28.

12. The Chamber Summons is disposed of in these terms with no order as to costs.

ALL OTHER NOTICES OF MOTION IN THE SUIT AND IN THE COUNTER-CLAIM:

13. Affidavit in Reply in Notice of Motion No. 2756 of 2016 to be filed and served on or before 31st July 2017. Affidavit in Rejoinder, if

any, to be filed and served on or before 22nd December 2017. List the Notice of Motion for hearing and final disposal on 30th April 2018.

14. Notices of Motion No. 1228 of 2016 and 1696 of 2016 to be heard along with Notice of Motion No. 2756 of 2016.

15. Counter-claim No. 10 of 2016 is to be tagged along with Suit No. 3598 of 1996 and both are to be shown together.

(G. S. PATEL, J.)