

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

**JUDGE'S ORDER NO. 213 OF 2016
IN
SUMMARY SUIT NO. 3068 OF 2010**

Bakhtawar Constructions Pvt. Ltd. & Ors.Plaintiffs

Versus

United Breweries & Anr.Defendants

Mr. Ankit Lohia a/w. Mr. Sameer Tapia, Ms. Rujuta Joshi and Ms. Krushi
Barfiwala i/b ALMT Legal for the Plaintiffs

Dr. Birendra Saraf a/w Ms. Pooja Kshirsagar, Mr. Ashir Amin and Ms.

Aishwaryajeeta Tawade i/b Kanga & Co. for Defendants

CORAM: S. J. KATHAWALLA , J.

DATE: 18th JANUARY 2017

P.C.:

1. Heard Counsel for Plaintiffs and Counsel for Defendants.
2. The Plaintiffs have filed the present Judge's Order for directions to Deputy Commissioner of Income Tax, Range 7 (1) (1), BMTC Building, 2nd Floor, Room No. 240, 80 Feet Road, Koramangala, Bengaluru – 560 095 for production of documents. The Defendants object to the same. However, for reasons stated in Affidavit in support of Judge's Order, I am of the view that the Judge's Order ought to be allowed, as the documents sought by the Plaintiffs are germane to the issues framed and hence, I pass the following order:

3. On the returnable date of the witness summons, the Deputy Commissioner of Income Tax, Range 7 (1) (1), Bengaluru is directed to produce before this Court, certified copies of the following documents, duly paginated:

- (a) A copy of computation of gross total income and net taxable income of United Breweries Ltd. for the Assessment Year 2006 – 07 as per Return of Income filed.
- (b) A copy of assessment order passed under Section 143(3) of Income Tax Act for United Breweries Ltd. for Assessment Year 2006 – 07.
- (c) A copy of Tax Audit Report in Form No. 3 C D filed by the Tax Auditor of United Breweries Ltd. for Assessment Year 2006 – 07.
- (d) Annexures to Clause 25(a) of the Tax Audit Report about carry forward and set-off brought forward loss in Form 3 C D.

4. Upon the production of the documents before this Court, they shall be kept in a sealed envelope with the Prothonotary and Senior Master of this Court.

5. The Plaintiffs' witness and representatives of both parties together with their respective Advocates will be entitled to take inspection thereof in the presence of each other. The Plaintiffs' Advocate and Plaintiffs' witness Mr. Amogh Ghaisas will be entitled to take two sets of photocopies of such pages/portions of the documents that they consider to be relevant and/or material to their case. An additional set of such copies shall be taken by the Plaintiffs and deposited in a sealed cover with the Prothonotary and Senior Master and the same shall be

retained by him in safe custody. No further copies shall be made of such photocopies except with the leave of the Court.

6. Upon taking two sets of photocopies as stated above, one set will be retained by Plaintiffs' witness Mr. Amogh Ghaisas and the other set of photocopies will be retained by Plaintiffs' Advocates, who shall at all times keep it in their possession and that of Plaintiffs' witness Mr. Amogh Ghaisas and shall not part with their possession to anybody without leave of this Court. It is clarified that in addition, neither of the Plaintiffs, their witnesses, their servants and/or employees and/or agents shall disclose or part with their possession except with the leave of this Hon'ble Court.

7. The certified copies so produced by the Income Tax Authority as stated in clause 3 above shall be retained with the Prothonotary and Senior Master in a sealed envelope till the disposal of the Suit and any Appeals therefrom to the Division Bench of this High Court and the Supreme Court of India.

8. The Plaintiffs' witness, Mr Amogh Ghaisas will be entitled to view the documents referred to in clause 3 above and refer to it in his Affidavit in lieu of Examination in Chief and quote/reproduce such portions/passages in his Affidavit in lieu of Examination in Chief if he so desires.

9. At the request of Plaintiff's Counsel, time to file the Affidavit in lieu of Examination in Chief of Plaintiffs' First witness is extended upto 31st March, 2017.

10. The parties have signed an agreement titled "Confidentiality Agreement" as per photocopy marked "x" in order to ensure that there is no leakage of the information to the public at large either by themselves or their witnesses or through their servants and/or agents and/or employees. Plaintiffs undertake to this Hon'ble Court to abide by the terms of the Confidentiality Agreement and if any unauthorized disclosure of the documents is made by any of them they will abide by such orders and directions this Hon'ble Court may deem fit to remedy such breach of the Confidentiality Agreement.

11. The Plaintiffs have filed a List of Witnesses. Plaintiff No.8 is their only witness besides the Deputy Commissioner of Income Tax, Range 7 (1) (1), Bengaluru.

12. Liberty to apply in case of any difficulty.

13. Stand over to 13th February, 2017 at 3.00 p.m.

(S.J.KATHAWALLA,
J.)