

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 366 OF 2016
IN
SUIT NO. 105 OF 2016
WITH
NOTICE OF MOTION NO. 1492 OF 2016

Bharat Zaveri	...Plaintiff
<i>Versus</i>	
Sohan Mehta & Ors	...Defendants

Mr Aspi Chinoy, Senior Advocate, with Mr Sharan Jagtiani, Mr Archit Jayakar, Mr R Jhaveri & Ms Surabhi Agrawal, i/b Jayakar & Partners, for the Plaintiff.

Mr FE DeVitre, Senior Advocate, with Mr Arif Bookwala, Senior Advocate, Mr Z Andhyarujina, Mr Vinay Kanodia, Ajay Khatlawala, Samindara Surve, Nirav Shah & Aditya Singh, i/b Little & Co, for Defendants Nos. 1 to 3.

Mr Akash Menon, i/b Mr Ameya Gokhale, for Defendant No. 5 & Applicant in NMS No. 1492 of 2016.

CORAM: G.S. PATEL, J
DATED: 2nd February 2017

PC:-

1. The Notice of Motion was fully argued. In fact I began to pronouncement of judgment in Court. The dictation was

incomplete last evening. The matter was kept for orders again this morning to continue the dictation.

2. This morning, on taking instructions Mr Jayakar on behalf of the Plaintiffs seeks leave to withdraw the Notice of Motion. I am inclined to allow this application though it is made late, and with the clarification that there is no assessment of the Plaintiffs' case on merits even at the *prima facie* stage. All contentions on all sides are left open. The Notice of Motion is disposed of in these terms. It is clarified that the Plaintiffs will not file a fresh Notice of Motion on the same cause of action or for the same reliefs.

3. Mr Jayakar requests that the hearing of the Suit be expedited. He makes this request on the basis that during the hearing I had frequently expressed a view that there were aspects canvassed by the Plaintiffs that required evidence. This is a not unreasonable request, and none of the Defendants can have any objection to it.

4. In the meantime there is an application by Defendant No.5 by way of Notice of Motion No. 1492 of 2016 under Order 1 Rule 10 on the basis that it is neither a necessary nor a proper party. I am inclined to agree. Mr Jayakar does not contest this Notice of Motion but he submits that the 5th Defendant's representative may well be required as witnesses at the trial of the Suit. He therefore submits that appropriate directions be given for the preservation of the documentary material relating to the contract in question and that the 5th Defendant which is overseas must undertake to the Court to depute its representative to give evidence if requested by either side

or by the Court itself. These submissions also deserve to be accepted. Defendant No.5 is ordered to be deleted as a party Defendant to the Suit provided that it gives a written undertaking on or before 17th February 2017 that on a request being made by either the Plaintiffs or any of the Defendants it will depute a duly authorised officer to give evidence or produce documents or both at the trial of the Suit and, secondly, that it will till the final disposal of the Suit preserve in its custody and possession all documents both physical and electronic relating to the subject matter of the Suit i.e., the contract between Defendant No.5 and Air India relating to the Hajj 2012 period, as also in relation to all amounts received from Air India and disbursements made by Defendant No.5 to Defendant No.4 in relation to that contract. I will list the 5th Defendant's Notice of Motion at a later date for final orders in these terms once that undertaking is furnished.

5. By consent, the Suit is taken up for directions now. Defendants Nos. 1 to 3 waive service of the Writ of Summons. Defendants Nos. 4 and 6 have not been served. Defendant No.4 has since been de-registered as a company. Mr DeVitre on behalf of the Defendants Nos. 1 to 3 agrees that his attorneys will provide Mr Jayakar with the address of Mr Ramesh Manglani in Dubai who is said to be presently in charge of Defendant No.4 and was so at the relevant time. Liberty to the Plaintiffs to amend the title to correct the name and address of Defendant No.4 without need of re-verification. Mr DeVitre will supply the address by Monday, 6th February 2017. The necessary amendment will be carried out by 10th February 2017.

6. In any case, the Writ of Summons will have to be served on Defendants Nos. 4 and 6. Given the facts of the case, liberty to the Plaintiffs to effect service on Defendants Nos. 4 and 6 by courier. As regards Defendant No.4 service is to be effected through a reputed international courier company such as BLUE DART, FEDEX or DHL with proof of delivery and an Affidavit of Service will be required. It is not necessary to effect service through the Office of Sheriff.

7. List the Suit high on board for further directions including filing of Written Statement, discovery and inspection etc. on 24th February 2017.

8. It goes without say that all rights and contentions of both sides are expressly kept open and there is no decision on merits as a result of this order.

(G. S. PATEL, J.)