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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13986 OF 2018

WRIT PETITION NO.13987 OF 2018

WRIT PETITION NO.33105 (ST) OF 2018

Harish Loyalka & Anr. .. Petitioners.

V/s.

Elegant Industries Pvt. Ltd. ..Respondent.

Mr.Avinash Joshi with Mr.Vipul Bilve I/.b. Mulla & Mulla & C. B. & C for the Petitioners.

CORAM: M.S.SONAK, J.

DATE : DECEMBER 7, 2018

P.C.:-

Not on board. Taken on board.

2. In all these petitions, the challenge is to the order dated August 16, 2018. The orders are identical and are annexed to the respective petitions as Exhibit-A and Exhibit-B. For the sake of convenience, the order in Writ Petition No.13986 of 2018 are referred.

3. The order at Exhibit-A dismissing the application Exhibit-27 taken out by the Petitioners *inter alia* seeking a restraint on Mr.Dileep Nevatia, describing himself as a Director and authorized signatory of the Respondent Comapny and appearing on behalf of the Respondent company.

4. Mr.Joshi, learned counsel for the Petitioners, on instructions, seeks leave not to press the challenge to the orders at Exhibit-27 in each of the petitions, with liberty to challenge the said orders in case the Petitioners' appeals before the appellate bench of the Small Causes Court are ultimately decided against the Petitioners. Since the request is quite consistent with the provisions of section 105 of the Civil Procedure Code or at-least the principles of section 105, there is no difficulty in accepting the said requests.

5. Accordingly, leave is granted to withdraw the petitions in so far as the challenge to the orders at Exhibit-27 in each of the petitions, is granted with liberty to challenge the impugned orders in case the appeals instituted by the Petitioners before the appellate bench are decided against the Petitioners or even if the said appeals are decided in favour of the Petitioners but the

Respondent seeks to challenge the same.

6. So far as the orders at Exhibit-B in each of the petitions are concerned, the appellate bench has correctly taken the view that considering the decisions of the Apex Court, the applications for production as additional evidence can be considered at the stage of final disposal of the respective appeals. There is no error, much less any jurisdictional error in this approach / order. The petitions in so far as the challenge to orders at Exhibit-B in each of these petitions are liable to be dismissed and the same are hereby dismissed.

7. Therefore, all the above three petitions are disposed of with the following order:-

i) In so far as the challenge to order at Exhibit-A in each of these petitions is concerned, leave is granted to the Petitioners to withdraw the petitions with liberty to challenge the said order in case the appellate bench dismisses the Petitioners' appeals and the Petitioners seek to challenge the said dismissal or even if the appellate bench decides in favour of the Petitioners and if the Respondent seeks to challenge the said decision. All contentions of

the parties on merits are, therefore, kept open to be urged at that stage;

ii) So far as the challenge in the writ petitions to the orders at Exhibit-B in each of the petitions are concerned, the same are hereby dismissed;

iii) All the above petitions are disposed of in the aforesaid terms;

iv) There shall be no order as to costs.

(M.S.SONAK, J.)