

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**NOTICE OF MOTION NO. 184 OF 2018**  
**IN**  
**CHAMBER ORDER NO. 1273 OF 2017**  
**IN**  
**SUIT (L) NO. 137 OF 2017**

Harendra Mahendrakumar Panalal & Anr ...Plaintiffs  
*Versus*  
Bharat Mahendrakumar Panalal & Ors ...Defendants

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**Mr Gauraj Shah, with Reshma Chitnis-Potdar, & Shaunak Gokhale,**  
*i/b Chitnis Vaithy & Co., for the Plaintiffs.*  
**Mr Naushad Engineer, with Murtaza Federal & Nikita Mishra, i/b**  
*Federal & Rashmikant, for Defendant No. 1.*

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**CORAM: G.S. PATEL, J**  
**DATED: 16th August 2018**

**PC:-**

1. This Notice of Motion is a classic case of a gross abuse of the process of this Court. It shows how our routine administrative processes are abused and wrongful advantage is taken of them.
2. The Notice of Motion seeks that SJ Kathawalla J's order dated 21st December 2017 be quashed and set aside. Here is that order:

"1. Heard the Learned Advocate appearing for the Defendant No. 1. Perused the Chamber Order and the Affidavit filed in support thereto. The Suit was listed before the Prothonotary and Senior Master for rejection on 20th June 2017. Since none appeared for the Plaintiffs, the following order was passed:-

*"Plaintiff to remove office objections on Suit and get the same numbered and registered on or before 11-07-2017, failing which Suit to stand rejected under O.S. Rule 986."*

2. There are 22 objections raised by the Court office. However, none have been removed by the Advocate for the Plaintiffs till date. No reason is given in the Affidavit in support to the Chamber Order, as to why the Plaintiffs and/or their Advocates were absent before the Prothonotary and Senior Master when the matter was listed for rejection on 20th June 2017. Even today none appear for the Plaintiffs. In view thereof, the above Chamber Order stands dismissed with costs of Rs. 10,000/- payable by the Plaintiffs to the Defendant No. 1. The Chamber Order is accordingly disposed off."

3. The Affidavit in Support of this Motion predictably blames the Plaintiffs' Advocates. This is on the basis that their Advocates missed the matter when it was listed. There is no explanation whatsoever to Kathawalla J's observations.

4. It gets worse. There is an averment in paragraph (k) at page 8 that the Plaintiffs have complied with "almost all objections and that this can be verified from the record". I have indeed verified the record. The objections are noted behind volume IV of the Plaint. On

two pages, there are 22 objections. On an earlier page there is a further noting. As to the 22 objections, there is ostensible compliance with objection No. 8, which relates to the Vakalatnama; objection No. 9 which relates to corrections to be initialled by the Advocates; objection No. 12, regarding missing items in the index; objection No. 17 in regard to the verification being in improper format; and objection No. 18 which says that in paragraph 45, the name of the Constituted Attorney is not mentioned. Here are scans of the two pages (overleaf)

# Objections

- 1) Write date of cause of action in Para no. 4/ IN THE HIGH COURT OF JUDICATURE AT IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL SUIT NO. OF 2016
  - 2) Write the approximate valuation of suit/claim amount in Para no. 44 and pay detail
  - 3) As per para- Explain jurisdiction
  - 4) Replace Page nos 98, 99, 103 to 110, 112 to 129, 133 to 140, 144, 145, 154, 155, 159, 160, 162 to 169, 171 to 187, 189 to 205, 216, 218, 221 to 228, 237 to 260, 243, 244, 251, 258, 260, 262 to 275, 277 to 278, 280 to 283, 285, 288 to 291, 299, 301, 307, 308, 316 to 320, 330, 331, 333, 337, 338, 346, 347, 350, 350A, 353 to 358, 362 to 367, 372, 373, 376, 377, 378 to 383, 403, 404, 408 to 419, 422, 423, 427, 428, 431, 432, 436, 437, 440, 441, 446, 447, 451, 452, 456 to 462, 465, 466, 471, 472, 479 to 482, 493 to 503, 504 to 509, 526, 527, 531, 532, 537, 543, 545, 560, 566 to 569, 576, 578, 595, 597, 603, 605 to 610, 613, 616, 619 to 623, 625 to 630, 632, 633, 636, 638 to 640, 642 to 643, 656 to 662, 665, 671, 675, 678, 679, 680, 681, 685, 686 to 716, 769 to 804, 808 to 812, 814 to 823, 832, 842 to 845, 878, 890, 900 to 911, 916, 918, 924 to 934, 936 to 938, 949 to 955, 979 to 985, 987, 996 to 998 with typed copy
- Mr Vishal Gupta, Advocate,  
OS Regn ADVI CODE  
18 CB, Rajabhadur Mansion,  
Fort, Mumbai 400 001 # 9820308212  
Email: gupta.vbg@yahoo.com,  
gupta.pandey123@gmail.com
- Dated this day of October 2016
- 3) Furnish English official translation of Page nos 105 to 1, 322 to 325, 330, 331, 337, 341, 342, 346, 347, 350, 350-A, 353 to 356, 362 to 365, 372, 373, 376, 377, 382, 383, 389 to 400, 403, 404, 408 to 419, 422, 423, 427, 428, 431, 432, 436, 437, 440, 441, 446, 447, 451, 452, 456, 457, 461, 462, 465, 466, 471, 472, 479 to 482, 493 to 501, 507, 508, 515 to 541, 542, 546, 553 to 563, 567, 568, 904 to 911, 916, 918, 937, 938, 944, 957, 959, 965, 966, 968, 969

- 6) Exhibits to be marked
  - 7) Replace Page nos. 80, 81, 84, 101, -10
  - 8) Replace Page nos. 960, 961 with unmarked copy
  - 9) On Vakalatnama - check Pff & Def. no. & cancel Court Fee stamp
  - 10) Stitch Page no. 511 properly
  - 11) Corrections to be initiated by Advocate
  - 12) Exh 2, 3, 4, 5, 6, 11, 12, 13, 14, 17, 19, 20, V-2 need not be mark Exh copy
  - 13) stitch Page no. 827 horizontally
  - 14) In Index write Exh 8-1, V-2
  - 15) Placement of Exh 44-1, WW, XX is missing
  - 16) Synopsis is not as per Practice note v3 also do proper pagination
  - 17) Page no. 45, Para 34 is missing
  - 18) Para 32 is double
  - 19) Verification is not as per Form B.
  - 20) In Para 45 - write name of CA
  - 21) Produce original POA by which, Pff 1 & 2 - has authorized.
  - 22) Sayant Baghel shall testify Plaintiff
  - 23) Page 985 is missing
  - 24) True copy last page of Exhibit
  - 25) Defect Court fee of Rs. 2000/-
- all objections not complied.  
Whereby rejected vide 986.
- [Signature]* 28/8/18  
*[Signature]* 28/8/18

5. The original Court records thus do not show compliance with other objections. In particular, objection No. 20 is that page 985 is missing. It is still missing. There are no averments as required in paragraph 13. Page No. 45 and paragraph 34 are missing (objection No. 15). This list goes on almost endlessly.

6. I do not understand how the Plaintiffs can honestly state today that “almost all objections” have been complied with. Indeed, objection Nos. 4 and 5 relate to illegible copies and their official translation. Mr Shah is instructed to state that the documents are so illegible that they can be read only by family members. Even a translator cannot read these documents. I do not pretend to understand what that is supposed to mean, if anything. Mr Shah says that of several tens of documents mentioned in objection Nos. 4 and 5, some, but not all, have now been retyped with difficulty and been got translated. That is too little too late.

7. The Suit claims to be for partition and assails transactions going back to the 1980s. This practice of filing suits with all manner of objections and then delaying the removal objections has several effects, none of them very good. (For instance, there are still filings on lodging numbers going back nearly a decade in various departments). The idea is to lock up properties on the ground that there is a pending litigation. A plaintiff has the responsibility to ensure that his filing is complete, and that all objections are removed in a timely fashion.

8. Mr Engineer points out that after the Plaintiffs filed Notice of Motion on 19th January 2018, they did not care to serve it for several months, until 28th March 2018. Costs ordered have even now not been paid — and for this, the non-removal of office objections is wholly irrelevant. There was no stay on payment of costs imposed, and the Plaintiffs cannot decide for themselves when to pay costs or whether to pay them at all. This is yet another reason not to show the Plaintiffs the slightest indulgence.

9. I see no reason whatsoever to grant Plaintiffs any indulgence. Mr Shah requests that liberty be reserved to the Plaintiffs to file a fresh suit. That cannot be done; such liberty is not reserved merely for the asking.

10. The Notice of Motion is dismissed. No costs.

**(G. S. PATEL, J)**