

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION NO. 171 OF 2016
IN
COMMERCIAL SUIT (L) NO. 4 OF 2006**

Victor Fernandes & Ors	...Plaintiffs
<i>Versus</i>	
Raghav Bahl & Ors	...Defendants

Mr Victor Fernandes, *Plaintiff in person.*
Mr Arif Doctor, *with Khursheed Vajifdar, i/b J Sagar Associates, for*
the Defendants.

CORAM: G.S. PATEL, J
DATED: 10th January 2018

PC:-

1. This Notice of Motion (originally filed as Notice of Motion No. 1139 of 2016) is thoroughly misconceived. It purports to seek a judgment or decree on admission under Order XII Rule 6 of the Code of Civil Procedure 1908. Plaintiff No. 1 appears in person for himself and the other Plaintiffs. He claims that this is a derivative action filed on behalf of Defendant No. 3, a limited company, of which the Plaintiffs say they are the majority of the minority shareholders.

2. I find from the Affidavit in Support of the present Notice of Motion that the so-called admissions are not in fact set out here at all. Instead there is a reference to an earlier application and affidavit of 9th September 2014, filed in that form, i.e., as an application, but with no Motion or proper application in the suit itself. I have allowed Mr Fernandes, Plaintiff No. 1 in person, to refer to that affidavit of 9th September 2014.

3. On any reasonable reading of that affidavit of September 2014 it is not possible to say that there is an admission of fact made in the Written Statement, or that this is an application by the Plaintiffs sufficient to warrant a decree in the suit. A few examples from the September 2014 affidavit will suffice. Paragraph 6 of that affidavit refers to alleged admissions through statutory filings and these relate *inter alia* to details in the shareholding, directorships, promoterships and so on. Then there are narratives about documents found during a discovery and inspection process. From paragraph 21 onwards, there is a narrative about certain clauses of the shareholders' agreement. It is at this stage that the evident misunderstanding as to what constitutes a judgment on admission begins. For instance, in paragraph 24 of the September 2014 affidavit the Plaintiff say that the Defendants have admitted that clauses of the agreement were "clauses of the said agreement". This is not the purport or ambit of Order XII Rule 6. Merely because the Defendants have accepted that there was a shareholders agreement or that it had certain causes does not automatically entitle the Plaintiffs to a decree. The Plaintiffs must be able to show that the agreement continues and was not terminated and that they had legal enforceable surviving rights under that agreement, and that all this

has been unequivocally and inexplicitly, i.e., without any ambiguity, admitted by the Defendants. Nothing short of this constitutes an admission of fact to justify a decree on admission. In any litigation there may be portions on which the Defendants have no dispute. These cannot be plucked out to overshadow the principal disputes in the litigation or deployed in support of an application for a judgment on admission.

4. This law does not change because the matter is argued by a party appearing in person. There is no separate consideration if the submission is advanced by a lawyer or by a litigant. No amount of authority can be used to dislodge a fundamental lacuna or misconception in the frame of the application.

5. The suit is as yet pending trial. Even issues have not yet been framed. There is no reason why the Plaintiffs should be allowed to take a short cut through their suit.

6. I see no merit in the notice of motion and I propose to dismiss it, although, despite Mr Doctor's protests, without an order of costs at this stage.

7. List the suit for framing issues on 23rd January 2018 on the regular board.

8. This order is without prejudice to the rights and contentions of the parties on both sides in the suit itself.

(G. S. PATEL, J)