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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 53 OF 2018
IN
COMM SUMMARY SUIT NO. 411 OF 2018**

Phulchand Exports Pvt Ltd	...Plaintiff
<i>Versus</i>	
Axis Bank Limited	...Defendant

**Mr Pradeep Sancheti, Senior Advocate, with Mr Jay Gala, i/b
Diamondwala & Co., for the Plaintiff.**
**Mr Cherag Bulsara, with Rohit Gupta, i/b M/s. K Ashar & Co., for
the Defendant.**

**CORAM: G.S. PATEL, J
DATED: 26th November 2018**

PC:-

1. I heard Mr Sancheti at some length in this Summons for Judgment. The matter then took an exceedingly strange turn. The sole Defendant is Axis Bank Limited, represented in Court by Mr Bulsara and Mr Gupta. Mr Gupta pointed out that the Defendant's Advocates received a communication from one Mr. Ajaay S Jajodia in regard to the transactions in the Suit. I asked the Court Associate to call out Mr Jajodia's name. He was found to be personally present in Court. He is the person who, on behalf of the Plaintiff, verified the Plaint when it was filed through MMK Law Associates on 15th

March 2018. He also affirmed the Affidavit in Support of the Summons for Judgment again filed through MMK Law Associates, and, later, the Affidavit in Rejoinder.

2. Mr Jajodia had, it seems, given the Defendant's Advocates a compilation and a copy of a sworn affidavit. This compilation includes various documents, the sum and substance of which is to say that the transactions claimed by the Plaintiff in the Suit are entirely fraudulent and that the Defendant is being sought to be foisted with a fraudulent liability, the Plaintiff having colluded with one Star Minerals Resources Private Limited. Mr Jajodia's Affidavit was affirmed on 16th November 2018 in this very Summons for Judgment. To this Affidavit are annexed various letters and documents seeking to establish that the transaction is fraudulent.

3. Two things are immediately important. First, that Mr Jajodia marked these documents to the present Advocates for the Plaintiff, M/s Diamondwala & Co., by an email dated 7th October 2018 which is at pages 8 and 9 of the compilation appended to his Affidavit. A copy of this was also sent to the Plaintiff's Pradeep Agarwal and one Somlata Vyas. Mr Sancheti for the Plaintiff is undoubtedly taken unawares by all this. I do not see, however, how either his Attorneys or clients could have been unaware of these developments. His instructions immediately taken in Court are that Mr Jajodia has had a falling out only two months ago with the Plaintiff, Phulchand Exports Private Limited, and all this by Mr Jajodia is vindictive. Even making allowance for the fact that these are immediate instructions, the fact is that Mr Jajodia's Affidavit has very many signed documents annexed, and these do not lend

themselves to any such cursory or off-hand dismissal. Mr Jajodia points out, for instance, that the Plaintiff and Star Minerals contrived an arrangement for interest as high as 6% *per month*; that there was no genuine transaction as claimed in the suit; that the entire attempt was a subterfuge and attempted fraud, and so on. I only note this; I am not accepting the correctness of what Mr Jajodia says.

4. Had Mr Jajodia been an outsider, or even merely a disgruntled former employer, matters might have stood differently, and I might have then had to examine the correctness of what was being said, even assuming that Mr Jajodia could intercede like this. But Mr Jajodia stands on a different footing, because he is the very person who verified the plaint and filed all affidavits in the Summons for Judgment on behalf of the Plaintiff.

5. This is the second point, and it is now the only point that the Plaintiff faces: a Plaint wholly disavowed by the person who affirmed, and an Affidavit in Support of the Summons for Judgment and an Affidavit in Rejoinder equally disavowed by the deponent. Mr Sancheti attempts, valiantly but unsuccessfully, a submission that I should allow the deponent to be substituted. I think that is entirely beyond the realm of the Code of Civil Procedure, 1908, at least in my understanding of it. To allow this would be to wholly compromise the sanctity of verifications and affidavits on solemn affirmation or oath, matters that the Supreme Court has told us again and again are never to be taken lightly. If the person who verified the Plaint and affirmed both the Affidavit in Support of the Summons for Judgment as also the Affidavit in Rejoinder on behalf

of the Plaintiff now comes forward and says that all those transactions claimed in the Suit are false, then there is no *bona fide* suit before the Court at all. It simply cannot be that the Plaintiff can run through its muster roll to find a deponent who is more 'agreeable' (or less disagreeable), or more compliant. No court will entertain any application for a discretionary remedy in such circumstances.

6. The Affidavit filed by Mr Jajodia is taken on record and marked "J1" for identification with today's date.

7. The Summons for Judgment is dismissed. There will be no order as to costs.

8. The Defendant's contentions as to whether the Suit itself can survive are left open.

(G. S. PATEL, J)