

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

**NOTICE OF MOTION NO.282 OF 2016
in
COMMERCIAL SUIT NO. 8 OF 2006**

Nishit Kishordas Mehta .. Plaintiff
vs
Choksi Tube Co.Ltd & ors .. Defendants

with SUMMONS FOR JUDGMENT NO.63 OF 2015
in
SUMMARY SUIT NO.2916 OF 2006

Nishit Kishordas Mehta & ors .. Plaintiff
vs
Choksi Tube Co.Ltd & ors .. Defendants

with JUDGES ORDER NO.416 OF 2006
in
COMMERCIAL SUIT NO.8 OF 2006

Kishordas S.Mehta .. Plaintiff
vs
Choksi Tube Co.Ltd & ors .. Defendants

with NOTICE OF MOTION NO.2177 OF 2015
in
CHAMBER SUMMONS NO.76 OF 2014
in
SUMMARY SUIT NO.2916 OF 2006

Nishit Kishordas Mehta .. Plaintiff
vs
Choksi Tube Co.Ltd & ors .. Defendants

with NOTICE OF MOTION NO.282 OF 2016
in
COMMERCIAL SUIT NO.8 OF 2006

Nishit Kishordas Mehta .. Plaintiff
VS
Choksi Tube Co.Ltd & ors .. Defendants

Mr.Kishore Jain I.b Mr.P.V.Chande for Plaintiff
Mr.Gaurang Mehta with Ms.Juhi Patil I/b Mr.Amit Shroff for
Defendant nos.2,3A to 3C for Applicants in NMCD
No.282/2016 and NMS NO.2177/2015

CORAM : S.C.GUPTE, J
DATE : 15th MARCH, 2018

P.C

Heard learned counsel for the parties.

2. These two Notices of motions, namely, Notice of motion Nos.282 of 2016 and 2177 of 2015, are taken out by the Applicants who are original defendant nos.3A to3C in the Suit. Notice of motion No.282 of 2016 is for perjury. Since this would involve receiving evidence, the perjury notice is adjourned to the hearing of the Suit.

3. Notice of motion No.2177 of 2018 arises out of an order passed by this Court on a Chamber Summons for setting aside abetment and bringing legal heirs of the deceased-Plaintiff on record.

The Notice of motion seeks a recall of the order on various grounds. It is, firstly, contended by learned counsel for the Applicant that there was no notice to the Applicant when the Chamber Summons was heard. It is submitted that the Chamber Summons was not served on the Applicant. It is apparent from the record of the case including the order passed by the Appeal Court in the present Summary Suit that the legal heirs of defendant no.3 were represented by an Advocate who waived service on their behalf. The Writ of Summons was served in the Summary Suit. The same Advocate (a separated branch of the original Advocate's firm) appeared when the Chamber Summons was heard. Besides, effectively there is nothing pointed out to the Court as to why abetment could not have been set aside and the Plaintiff's legal heirs could not have been brought on record. Secondly, it is submitted that one of the Defendants (Defendant No.3) was already declared insolvent when the Chamber Summons was decided by the Court. It is submitted that the Official Assignee was not brought on record or served with the Chamber Summons. That is a grievance which the

Official Assignee should have raised. Considering the array of parties and their close relationship, it ill - suits the present Applicant to raise this grievance. Since there is no contest practically on the merits of the application for setting aside the abetment and impleadment of the legal heirs of the plaintiff, on a mere technical ground which also is not on a firm footing, as noted above, the order on the Chamber Summons cannot be recalled.

4. The only ground urged on merits is that the Court has passed an order on the Chamber Summons on a mis-conception. It is firstly submitted that there are no reasons discussed in the order. The order does refer to the reasons, namely, the grounds urged in the Affidavit-in-support of the Chamber Summons. Secondly, it is submitted that the orders seems to suggest that there are only two Defendants. The order does not suggest any such thing.

5. The aspect of alleged fraudulent conduct on the part of the Plaintiff pointed out to the Court really reflects on the merits of the perjury notice and will be decided when the perjury notice is heard.

6. The Notice of Motion is accordingly dismissed.
7. Learned counsel for the Applicant seeks some time firstly, to test this order and secondly, to file his reply to the Summons for Judgement, if necessary.
8. Summons for Judgement to come up on Board for hearing on 2.5.2018. Since a longer date is being given for hearing of the Summons for Judgement, no special order needs to be passed staying this order or granting further time to the Applicant to test this order.

(S.C.GUPTE, J)