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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 939 OF 2018
IN
SUIT NO. 1235 OF 2008

Amrutlal Zinabhai Steels Pvt Ltd ...Plaintiff
Versus
Paresh Vasanji Shah & Anr ...Defendants

Mr Cherag Balsara, *with Mutahhar Khan, Niyati Kalra & Rujuta Patil, i/b Negandhi, Shah & Himayatullah, for the Plaintiff.*

Mr Rajesh Shah, *with Sneha Patil, i/b AKS Legal Consultants, for Defendant No. 1.*

Mr Uday Bobade, *with Mohan Tekavde, for Defendants Nos. 2(a) to 2(d).*

CORAM: G.S. PATEL, J
DATED: 3rd December 2018

PC:-

1. The Affidavit in Reply of the 2nd Defendant is taken on record.

2. The Chamber Summons is by the Plaintiff seeking leave to file additional evidence in the form of documents and an Evidence Affidavit. The application comes to be made at a late stage of the trial, while PW1 is under cross-examination by the 1st Defendant

represented by Mr Shah. I will leave aside Mr Balsara's submission on behalf of the Plaintiff that the cross-examination so far has travelled far and wide into areas not immediately germane. That will be addressed at an appropriate time.

3. What the Plaintiff says is that pursuant to the recent Government decision to ban plastic bags, the Plaintiff undertook something that is described as spring cleaning. How the two are related, I do not pretend to understand. According to the Plaintiff, during this drive to greater orderliness, the Plaintiff found a number of documents that it says are relevant to a determination of the issues in the suit. These are in the form of various challans, invoices, weigh slips and other commercial transactional documents.

4. I do not believe that it would be a sound approach to leave out evidence that is otherwise available on the ground that it is being sought to be introduced at a late stage. I will, however, require the Plaintiff to commit itself to this: that other than the additional evidence that is now sought to be introduced, there are no further documents to be added in evidence. I will require a commitment from the Plaintiff that its Affidavit of Documents previously filed and the disclosures now made are complete and no further documents are sought to be produced by the Plaintiff. Mr Balsara on instructions confirms that this is so, and his statement is accepted.

5. Subject to this, I will allow the Chamber Summons and, despite the objections from Mr Bobade for the 2nd Defendant, will also allow an additional Evidence Affidavit of PW1 explaining the

further documents as also their co-relation to or implication on documents previously marked in evidence.

6. Of necessity this means that the cross-examination of PW1 by the 1st Defendant may have to backtrack to some extent and cover material previously addressed. That much latitude must be afforded to the 1st Defendant.

7. Subject to these observations, the Chamber Summons is made absolute.

8. The Additional Evidence Affidavit is to be filed and served on or before 7th December 2018 along with an additional compilation of documents and an additional affidavit of documents. I am not at this stage, however, admitting all the additional documents in evidence. I will take up the matter once again for that purpose, i.e., marking additional documents on 10th December 2018.

9. Between now and 10th December 2018 no further fresh hearings are to take place before the Commissioner.

10. The Chamber Summons is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)