

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION  
NOTICE OF MOTION NO. 664 OF 2017  
IN  
COMMERCIAL SUIT NO. 5 OF 2010**

|                                        |              |
|----------------------------------------|--------------|
| SBI Global Factors Ltd                 | ...Plaintiff |
| <i>Versus</i>                          |              |
| ICICI Lombard General Insurance Co Ltd | ...Defendant |

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**Mr Shyam Mehta, Senior Advocate, with Dhaval Patil, i/b K Ashar & Co., for the Plaintiff.**  
**Mr Shyam Kapadia, with Naval Sharma, Saket Satapathy, & Shriya Luke, i/b Tuli & Co., for the Defendant.**  
**Mr Tushar Buch, Managing Director and Chief Executive Officer of the Plaintiff, present.**

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**CORAM: G.S. PATEL, J  
DATED: 4th April 2018**

**PC:-**

1. This is the Plaintiff's application for leave to produce in evidence certain documents listed in Exhibit "B" to the Affidavit in Support and to lead further evidence of Mr Santosh Sawant, Assistant Vice President, IT and Client Services of the Plaintiff company as PW2.

2. There are very many things that can be said about this Notice of Motion, the Affidavit in Support and the manner in which it was presented yesterday, none of them very good or flattering. It is only because, pursuant to my oral directions yesterday, Mr Tushar Buch, the Managing Director and Chief Executive Officer of the Plaintiff is personally present in Court, and has before me today instructed Mr Mehta to state that the Plaintiff accepts the proposed order of costs and other conditions, that I will not further address the matter on merits. But for that, there was much to be said about the conduct of the Plaintiff.

3. The order of costs is because of the extraordinary and unexplained delay in filing the application; on account of the Plaintiff's failure to comply with the order of 8th February 2016 (SC Gupte J); and what I will only describe for now as the 'inaccuracy' — that euphemism is merely an act of undeserved kindness and should not be mistaken for anything else — of what is stated in the Affidavit in Support. The order of 8th February 2016 itself noted a then-existing delay on the part of the Plaintiff and imposed costs of Rs. 75,000/-. This does not seem to have had the necessary effect. This is one of many reasons why I required the presence of Mr Buch in Court today. His instructions to Mr Mehta before me in Court today are that the Plaintiff will accept the order of costs as also additional terms and conditions that are proposed, and which I have indicated to Mr Mehta.

4. The Notice of Motion is made absolute in terms of prayer clauses (a) and (b), subject to the following:

- (a) The Plaintiff will as a condition precedent on or before 9th April 2018 make payment to the Defendant of an amount of Rs. 7,50,000/- as costs, and which amount the Plaintiff accepts as reasonable in the facts of the case, and in place of an order on merits;
- (b) The proposed Affidavit of Evidence of PW2 is to be filed and served by 12.00 noon on 9th April 2018.
- (c) The Registry will accept that Affidavit of Evidence only subject to proof of payment of costs;
- (d) A compilation properly indexed and paginated will similarly be filed and served on or before 9th April 2018. This is also subject to proof of payment of these costs.
- (e) The Defendant will take inspection of the documents disclosed at the office of the Plaintiff's Advocates on 10th, 11th and 12th April 2018;
- (f) A statement of admission and denial will be filed and served on or before 16th April 2018;
- (g) All costs of recording cross-examination on commission from this point on will be borne entirely and only by the Plaintiff and will not be subject to any adjustment or accounting even if the suit is decreed. Costs of the commission means all costs, including commissioner's fees, steno charges, venue and other

costs, but does not include the Defendant's legal expenses.

- (h) The Commission will function on dates convenient to the Commissioner and the Defendant and the Plaintiff and its witnesses will have no say in the matter of dates or venue, subject to reasonable exceptions.

5. Commercial Suit No. 5 of 2010 will be listed high on the supplementary board on 17th April 2018 for marking the Plaintiff's documents. On that day, I will fix the schedule for cross-examination of PW2.

6. The order of 8th February 2016 directed the Plaintiff to file a list of all its witnesses and file all their Affidavits, this being a matter covered by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act 2015. That list of witnesses is not available even as of now. Thus, if there are any more witnesses in addition to PW2, their Affidavits of Evidence will also be filed on or before 9th April 2018 and a complete list of witnesses will also be filed and served on or before 9th April 2018. Mr Mehta is instructed to say that this will be done. The statement is accepted. This is also subject to proof of payment of costs.

7. The Notice of Motion is disposed of in these terms.

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