

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

**NOTICE OF MOTION NO. 2734 OF 2016
IN
SUMMARY SUIT NO. 787 OF 2013**

M/s.M.H. Construction	...Plaintiff/Applicant
Vs.	
The State of Maharashtra & Ors.	...Defendants

Mr.G.B. Pawar for Plaintiff.
Smt.Jyoti Chavan, AGP for Defendants.

CORAM : S.C. GUPTE, J.

DATE : 2 MAY 2018

P.C. :

Heard learned Counsel for the parties.

2 This notice of motion is taken out under Order 12 Rule 6 of the CPC for a decree on admission. The suit was originally filed as a summary suit. It prayed for a decree in the sum of Rs.96.40 lakhs. This amount comprised of outstanding bills for civil construction work carried out by the Plaintiff as a contractor for Public Works Department of the State. The suit is on the basis of the Defendant State's own documents including certificates issued by its officers certifying completion of work and its value.

3 On a summons for judgment taken out in the suit, this court granted unconditional leave to defend to the Defendant State. It is one of the main contentions of the Defendant State that though the work was

certified as complete by the officers of the State, when the Executive Engineer in-charge visited 3 out of 11 sites for which bills were submitted by the Plaintiff, it was found that the works were, in fact, not executed. It is submitted that the officers of the State were hand-in-glove with the Plaintiff. He submitted that action has been initiated in this behalf against the officers of the State accused of fraud and conspiracy.

4 The suit is at the stage of evidence. The Plaintiff has already led its evidence, whilst the Defendants have yet to produce documentary and oral evidence. At this stage, it is not permissible to pass a decree on admission on the basis of either the documents, which were, according to the Defendant State, forged and fabricated and/or alleged admissions of the Defendant which are claimed to be acts of conspiracy and fraud or innocent statements made *bona fide* on the basis of these documents when the fraud or conspiracy was not within the knowledge of the Defendant. In fact, the officer of the State, who had originally certified completion of work, has filed an affidavit, which forms part of the reply of the State to the summons for judgment, stating that he was made to sign the document without knowing the contents thereof and clarifying his position *vis-a-vis* the same. On these facts, when the matter is in the midst of active trial, no decree on admission can be passed.

5 The notice of motion is, accordingly, dismissed. Costs to be costs in the cause. Evidence to now proceed further before the court commissioner.

(S.C. GUPTE, J.)