

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

**NOTICE OF MOTION NO. 244 OF 2016
IN
COMMERCIAL SUMMARY SUIT NO. 256 OF 2014**

Mr.Kashi Vishwanathan Vishwam ...Applicant/Deft.3

In the matter between

ACG PAM Pharma Technologies Pvt.Ltd. ...Plaintiff
Vs.
Dr.Datsons Labs Ltd. & Ors. ...Defendants

Ms.Vrushali Kabare for Plaintiff.
Mr.L.T. Satelkar for Official Liquidator – Defendant No.1.
Mr.Ashish Kamat, Kunal Mehta and Himanshu Pradhan I/b. Crawford
Bayley & Co. for Defendant No.3 / Applicant.

CORAM : S.C. GUPTE, J.

DATE : 8 JANUARY 2018

P.C. :

Heard learned Counsel for the parties.

2 This notice of motion is taken out by original Defendant No.3 under Order 7 Rule 11 of the Civil Procedure Code. The present summary suit is filed by the Plaintiff basically against Defendant No.1 on the basis of an inter-corporate deposit. Defendant No.1 is presently in liquidation and is represented by the Official Liquidator. Defendant No.2 is arraigned as a party on the basis of a personal guarantee issued by him to secure the transaction. Defendant No.3, however, is sought to be arraigned merely on the ground that the document, on which the suit is based, is executed by Defendant No.3. It is not in dispute that the document is executed by

Defendant No.3 in his capacity as Director of Defendant No.1 and not in his individual capacity. Merely on the basis of averments made in the plaint that the Defendant is the executant of the document, albeit in his capacity as Director of Defendant No.1, and that Defendant No.1 is merely an instrumentality of Defendant No.3, no decree can be sought against the Defendant. No cause of action is made out accordingly against Defendant No.3. Even if the allegations in the plaint are read as a whole, there is no cause of action against Defendant No.3.

3 Learned Counsel for the Plaintiff, who shows cause to the notice of motion, relies on the provisions of Order 1 Rule 6 of the CPC. Learned Counsel submits that the Plaintiff is within his rights to arraign any party as a party defendant against whom the Plaintiff has a cause of action in respect of the same transaction. It is difficult to see how the Plaintiff has any cause of action against Defendant No.3 in respect of the inter-corporate deposit placed by the Plaintiff with Defendant No.1. The documents relied upon by the Plaintiff make it clear that Defendant No.3 has signed the documents squarely in his capacity as a director of Defendant No.1 and not in his individual capacity. The plaint accordingly discloses no cause of action against Defendant No.3 and the motion deserves to be allowed.

4 Learned Counsel submits that trial in the present suit has already commenced and in the premises, this court ought not to grant any relief to Defendant No.3 on the notice of motion. As I have noted above, there is absolutely no case on merits against Defendant No.3 as far as the present suit is concerned. None of the averments made in the plaint makes out any cause of action against Defendant No.3. If that is so, merely on the

ground of delay, the notice of motion cannot be thrown out.

5 The notice of motion is accordingly made absolute in terms of prayer clause (a). No order as to costs.

(S.C. GUPTE, J.)