

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL SUMMARY SUIT NO. 42 OF 2016
WITH
CHAMBER SUMMONS (L) NO. 1696 OF 2018**

Tata Motors Ltd	...Plaintiff
<i>Versus</i>	
Ghosh Brothers Automobiles & Ors	...Defendants

Ms Shaila Taware, i/b Deepika Motagi, for the Plaintiff.
Ms Jesal Shah, i/b D Shah, for Defendant No. 3.

CORAM: G.S. PATEL, J
DATED: 10th December 2018

PC:-

1. The Summary Suit was filed in 2016. The Plaintiff has had some difficulty in effecting service. This is evident from three Affidavits of Service that have been filed dated 5th January 2017, 30th August 2018 and 14th November 2018. These Affidavits show that service is incomplete on Defendants Nos. 1, 2, 4 and 5. The submission that the 1st Defendant has been properly served is not acceptable in the facts and circumstances of the case. The 3rd Defendant has been served. The 3rd Defendant is represented today and a submission is made that there has been a delay on the part of that Defendant in entering a vakalatnama. He was a Director of the

1st Defendant and seeks time to file an application to condone the delay in filing the vakalatnama.

2. In the meantime the Plaintiff itself has filed a Chamber Summons (L) No. 1696 of 2018 seeking an order of substituted service. The Chamber Summons is to some extent defective because it seeks this leave in respect of all the Defendants despite the fact that the 3rd Defendant has clearly been served.

3. In order not to waste further time, I will take the Chamber Summons up for hearing and final disposal immediately and will allow the Chamber Summons granting leave to the Plaintiff to serve Defendants Nos. 1, 2, 4 and 5 by substituted service. The Prothonotary and Senior Master will issue the necessary directions in regard to the content of the Notice to be published and the names of the newspapers in which it is to be published.

4. I state this because Defendants Nos. 1, 2, 4 and 5 are all in Gauhati, Assam and special directions will be required for publications in English and in vernacular press in that city.

5. In my view this automatically means that the 3rd Defendant will be entitled to a condonation of delay since the other Defendants have not been served and given his capacity as a Director or ex-Director of the 1st Defendant. The 3rd Defendant will file his vakalatnama on or before 11th January 2019. I will list the Suit itself for directions on 22nd January 2019. The Prothonotary and Senior Master will act on production of an authenticated copy of this order.

6. The Chamber Summons (L) No. 1696 of 2018 is to be got finally numbered in the course of the week for statistical purposes and stands disposed of in the aforesaid terms.

(G. S. PATEL, J)