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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO(OS) 65/2018 & CM Nos.14746-47/2018

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Date of decision : 17th April, 2018

M/S GUPTAJEE ENGINEERS & ANR Appellants

Through : *Mr. Neeraj Malhotra, Sr. Adv.
with Mr. Gaurav Khanna, Mr.
Deepak Jaiswal and Mr. Avi
Pandey, Advs.*

versus

MOTOR INDUSTRIES CO LTD (MICO) Respondent

Through : *Mr. Siddharth Bawa and
Mr. Shyamal Anand, Advs.*

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. The present appeal has been filed assailing an order dated 8th February, 2018 passed by the learned Single Judge in CS(OS) No. 135/2006 *Motor Industries Co. Ltd. v. M/s Guptajee Engineers & Ors.* By way of the impugned order, the learned Single Judge has rejected OA No. 163/2017 which had been filed by the appellants (*defendant nos. 1 & 2 in the suit*) assailing an order dated 9th

November, 2017 of the Joint Registrar. It appears that the respondents before us (*plaintiff in the suit*) had filed IA No. 13793/2016 *inter alia* under Order VII Rule 14 of the CPC praying for leave to place on record the following additional documents :

- (i) Power of Attorney dated 24th August, 2016;
- (ii) A fresh certificate of incorporation dated 18th January, 2008 consequent upon the change in name of the plaintiff company from *Motor Industries Co. Ltd.* to *Bosch Limited*.

2. The Joint Registrar had held that if these documents are taken on record, “*no prejudice shall be caused to the rights of defendants as the defendants will have opportunity to cross examine the plaintiff’s witnesses on the said documents. So far as delay in filing of the said documents is concerned, the defendants can be compensated in terms of money.*”

3. In these circumstances, to meet the ends of justice, the application was allowed subject to costs of Rs.5,000/- payable by the plaintiff, and the documents were directed to be taken on record.

4. So far as the Power of Attorney dated 24th August, 2016 is concerned, the same empowered a witness to depose on behalf of the company. While rejecting OA No. 163/2017 by way of the impugned order dated 8th February, 2018, in our view the learned Single Judge has rightly noted that there was “*no power of attorney required by a company for giving power to depose to a witness because deposition*

of a witness is as per the knowledge of the witness of the facts of the case”.

5. The chamber appeal before the learned Single Judge, therefore resulted in dismissal with costs of Rs.15,000/- holding that the same was totally frivolous and a waste of judicial time.

6. We had put it to Mr. Neeraj Malhotra, learned Senior Counsel who appears for the appellant that in our view the present appeal was *prima-facie* completely misconceived and unwarranted and that in case the same was pressed, the appellant would be liable for costs of the present appeal as well. He has, on instructions, chosen to argue the appeal.

7. It is to be noted that the respondents/plaintiff are represented in the appeal today. We have heard both sides.

8. We are of the considered view that no prejudice was caused to the appellants on account of the documents having been taken on record. The learned Single Judge had, also rightly concluded that the document, being a power of attorney, was therefore really not necessary.

9. The challenge by the appellant to the direction by the learned Single Judge permitting the appellant to change the name on the terms aforesaid and the direction to filing of an amended memo of parties is also completely misconceived. It is well settled that rules of procedure are handmaiden to ends of justice.

10. For the foregoing reasons, the present appeal is dismissed with costs in the sum of Rs.30,000/-. Costs shall be paid within a period of four weeks from today and proof of payment shall be tendered before the learned Single Judge.

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11. In view of the dismissal of the appeal, these applications do not survive for adjudication and are dismissed.

ACTING CHIEF JUSTICE

APRIL 17, 2018/kr

C.HARI SHANKAR, J



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