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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1497 OF 2016
IN
SUIT NO. 2837 OF 2001

Savitri Non Ferrous Metals Pvt Ltd ...Plaintiff
Versus
Export Credit Guarantee Corporation of India ...Defendants
Ltd & Ors

Mr Jacob K, *i/b DC Patankar, for the Plaintiff/Applicant.*
Mr Vishal Kanade, *with Sunil Tilokchandani & Subhasree*
Chatterjee, i/b M/s. Manilal Kher Ambalal & Co., for Defendant
No. 1.
Mr OA Das, *for Defendant No. 2.*

CORAM: G.S. PATEL, J
DATED: 9th January 2019

PC:-

1. Heard.
2. For the last time, I am now instructing the Registry that in all Notices of Motion the pagination is required to be correctly done. This is yet another Notice of Motion where I find that all Affidavits after the Affidavit in Reply have incorrect paging. I am making it clear that henceforth if there is any Affidavit that has incorrect

paging it will simply be ignored or even directed to be removed from the Court record. The Registry will not place any Motion for final hearing without checking the paging. If paging can be correctly done on the Appellate Side and at our Benches in Nagpur and Aurangabad, there is absolutely no reason it cannot be done in matters on the Original Side.

3. The application is by the Plaintiff to reopen the evidence of PW1. The Affidavit in Support says very little. The matter was before various Courts. Documents were marked. Evidence was taken before the Commissioner, a Learned Advocate of this Court. There is an order of KR Shriram J dated 14th September 2015 at pages 65-66 with directions and, accordingly, on 5th October 2015 the Commissioner closed the cross-examination after the 1st Defendant had cross-examined PW1 extensively and completed that cross-examination. The 2nd Defendant adopted the cross-examination of PW1. At no point then was any liberty reserved to lead further evidence and in any case I do not see how it could have been. Mr Kanade for the 1st Defendant points out that there are significant admissions obtained in cross-examination and the wording of the prayers in the present Notice of Motion is so broad as to be suspicious for that very reason, i.e. that the only intention is now to attempt to undo the effect of those admissions by obtaining permission “to lead additional evidence”.

4. What is this additional evidence that the Plaintiff seeks to lead through PW1? Why can it not be led through any other witness of the Plaintiff since the Plaintiff has not yet closed his case? Why is it

not possible to use any of the other modes available in the Code of Civil Procedure 1908 to prove the documents in question?

5. There are simply no answers to any of these questions. Essentially there are only two documents. One of them was apparently obtained subsequently by the Plaintiff through the Right to Information route and is a document from the 1st Defendant containing the name of the Plaintiff as a sister concern. This document is dated 30th October 1998 and it is always open to the Plaintiff to take any of the available steps in accordance with the Code of Civil Procedure 1908 to have this document received in evidence. This does not justify “reopening the evidence of PW1”.

6. The second document seems to be a balance sheet or financial return of the Plaintiff. According to the Plaintiff, the Defendants have denied the correctness of this and similar statements, one of which was annexed by them to some proceedings before the Debts Recovery Tribunal. The fact that the Defendants have annexed the document does not mean that the Defendants have accepted that document. These are the Plaintiff’s own financial returns and it is always possible for the Plaintiff to prove this in accordance with law. The Defendants’ denial or acceptance of it is wholly irrelevant. If the Defendants admit the financial returns they will just be marked by consent, but that is the most that will happen.

7. None of these documents are, therefore, being shut out. It is yet open to the Plaintiff to prove all these documents. It will just not be through PW1.

8. The Notice of Motion is dismissed. There will be no order as to costs.

(G. S. PATEL, J)