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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

Dhanappa
I. Koshti

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**NOTICE OF MOTION NO. 1264 OF 2017
IN
SUIT NO. 294 OF 2014**

Royal John Gomes & Ors.	..Applicants
In the matter between	
Shreeji Krupa Hotels & Ors.	...Plaintiffs
vs	
Rosy John Gomes & Ors.	...Defendants
And	
Tulsi Parmanand Jashnani.	...Respondent No.1.
And	
Sanjay G. Patil	...Respondent No.2.

.....

Mr Neville Lashkari a/w Mr Meit Sampat I/b Little & Co. for the Plaintiffs.

Mr K.T.Kukreja I/b Mr Arvind Manghirmalani for Defendant Nos.1 to 12/ applicants to the Notice of Motion No. 1264 of 2017.

Mr S.A.Jabbar a/w Mr Vipul Shukla I/b Mr J.R.Vyas for Defendant Nos. 13 and 14.

Mr Deepak Shukla I/b Vinod Mistry & Co. for Defendant No.15.

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**CORAM : B. P. COLABAWALLA, J.
AUGUST 8, 2019.**

P.C. :

This Notice of Motion has been filed by defendant Nos.1 to 12 seeking to recall the order dated 4th July, 2017 passed by this Court in Chamber Summons No. 1068 of 2014.

2 The aforesaid Chamber Summons was filed by defendant No.15, who, at the time of filing the Chamber Summons, was not a

party - defendant in the suit. The Chamber Summons was filed by the applicant / defendant No.15 to join him as well as the respondent to the Chamber Summons as party defendant Nos.15 and 16 in the above suit. When the Chamber Summons was heard, the learned counsel appearing on behalf of the plaintiffs stated that the plaintiffs have no objection if the Chamber Summons was allowed in terms of prayer clauses (a) and (b) thereof. In view of the aforesaid statement, the Chamber Summons came to be allowed and the applicant as well as the respondent to the aforesaid Chamber Summons were added as a party - defendant Nos.15 and 16 respectively. It is this order that is sought to be recalled and that too at the instance of defendant Nos. 1 to 12.

3 I must note that defendant Nos.1 to 12 were represented by an advocate when the aforesaid Chamber Summons was heard by this Court. There was no objection of any nature whatsoever to allow the Chamber Summons. Today it has been argued before me that this order be recalled as a fraud has been played upon this Court. The fraud alleged by defendant Nos.1 to 12 is set out in paragraph 2 as well as paragraph 8 of the affidavit in support. Adverting to these averments, the learned advocate appearing on behalf of defendant Nos.1 to 12 submitted that defendant Nos. 15 and 16 were neither

necessary nor proper parties to the present suit, and therefore, the order dated 4th July, 2017 ought to be recalled.

4 I am unable to agree with the aforesaid submissions. Firstly, I fail to understand how defendant Nos.1 to 12 can object to another defendant being added to the plaintiff's suit, especially when the plaintiffs themselves have consented to them being joined as a party – defendants.

5 Even otherwise, what has been stated in paragraphs 2 and 8 of the affidavit in support of the Notice of Motion really touch the merits of the matter and not with reference to the amendment. If what is alleged in the aforesaid paragraphs is true, defendant Nos.1 to 12 will be entitled to raise those contentions as and when the suit goes to trial. I see absolutely no prejudice much less any fraud being committed by joining defendant Nos.15 and 16 to the present suit.

6 In these circumstances, I find no merit in the Notice of Motion. It is accordingly dismissed. However, there shall be no order as to costs.

(B.P.COLABAWALLA, J.)