

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

**NOTICE OF MOTION NO.185 OF 2017
WITH
NOTICE OF MOTION NO.293 OF 2019
IN
SUIT NO.18 OF 2017**

M/s. Ossia DevelopersPlaintiff

Vs.

Vishwanath Harishanker Mishra and Anr.Defendants

**WITH
NOTICE OF MOTION NO.2238 OF 2018
IN
SUIT NO.1337 OF 2018**

Mr. Piyush M. Shah for plaintiff.

Mr. Bipin Babulal Shah, representative of plaintiff present.

Mr. B.K. Bali I/b. Bali Associates for defendant no.1.

Mr. Ashok C. Giri for defendant no.2.

CORAM : K.R.SHRIRAM, J.

DATE : 5th FEBRUARY 2019

P.C.:

SUIT NO.18 OF 2017

1 The suit has been lodged on the basis that plaintiff is a registered partnership firm. In the cause title it is stated “M/s. Ossia Developers, a registered partnership firm registered under Indian Partnership Act”.

2 On 22nd January 2019 the following order came to be passed :

1. Paragraph 4 of the order dated 20th December 2018 reads as under :

4. Mr. Shah states that he will provide a photocopy of the power of attorney dated 8th November 2016 to Mr. Bali during the course of today together with an extract of the list of partners from the Registrar of Firms. Statement accepted as an undertaking to this Court with a noting that on 18th December 2018 plaintiff had made a false representation to

this Court that Mr. Siddharth Bavishya Shah was the Managing Partner of plaintiff firm.

2. Mr. Bali states that despite this order, plaintiff has failed and neglected to give inspection of an extract of the list of partners from the Registrar of Firms. Mr. Bali states that he has received a certificate issued by Registrar of Firms, Mumbai on 7th January 2019 in which it is stated that plaintiff was dissolved on 5th January 2013. Mr. Bali states that copy of the certificate has been given to Mr. Shah for plaintiff and defendant no.1 is taking out a notice of motion for dismissal of the suit on the basis of these facts to which a copy of this certificate will also be annexed. Mr. Bali states that it is for this reason plaintiff was not giving inspection of the list of partners from the Registrar of Firms and Mr. Siddharth Bavishya Shah has been appointed as the Constituted Attorney of Mr. Bipin Babulal Shah and not of the firm. Mr. Shah states that in the plaint it is stated that plaintiff is a registered partnership firm which on the face of it is a false statement. Mr. Shah states that he has to take instructions.

3. Stand over to 5th February 2019 on which date Mr. Bipin Babulal Shah shall remain present in Court, failing which such order as required to ensure his presence will be passed.

3 Mr. Shah admits that the firm had been dissolved and an application has been made to the Registrar of Firms for fresh registration of partnership firm.

4 Therefore, the suit could not have been filed and a false statement has been made by plaintiff. The suit, therefore, stands dismissed with costs in the sum of Rs.5 lakhs to be paid to defendant no.1 and this amount to be paid by way of cheque drawn in favour of the advocate on record for defendant no.1 within two weeks from today.

5 In view of the above, registry to issue notice to Bipin Babulal Shah and Siddharth Bavishya Shah as to why perjury proceedings should not be initiated against them. This notice to be made returnable on

12th April 2019.

6 All interim applications stand disposed. All interim orders also stand vacated.

SUIT NO.1337 OF 2018

Suit alongwith notice of motion to be listed for directions on 22nd February 2019.

(K.R. SHRIRAM, J.)