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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMS SUIT NO.1551 OF 2018

WITH

INTERIM APPLICATION NO.3307 OF 2022

AND

NOTICE OF MOTION NO.15 OF 2019

Bobby S/o. Bijoy Chandra Mohanty

...Plaintiff

Versus

Nagarjuna Constructions Company Ltd.

...Defendant

Aman Kacheria with Krushika Udeshi i/b. A and D Legal Advocates
for the Plaintiff.

Abhishek Khare i/b. Khare Legal Chambers for the Defendant.

CORAM : R.I. CHAGLA J.
DATE : 16 January 2023

ORDER :

1. The learned Counsel appearing for the Plaintiff has sought leave to withdraw the Commercial Suit No.1551 of 2018 under Order 23 Rule 1 of the Code of Civil Procedure, 1908 with liberty to file fresh Suit in the appropriate Court.

2. It is noted that the leave for withdrawal of the present Commercial Suit has been sought in view of an application having

been filed by the Defendant under Order 7 Rule 10 read with Section 151 of the CPC on jurisdiction. There is an objection as to the territorial jurisdiction of this Court. Further, the learned Counsel for the Defendant has referred to certain events and in particular the fact that the disputes were initially being referred to arbitration by the Defendant for settlement of disputes between itself and Project Management and Consulting Company. The Plaintiff had filed statement of claim before the Arbitral Tribunal and thereafter the Defendant had filed application under Section 16(2) of the Arbitration and Conciliation Act, 1996 which was opposed. A counter claim had been filed by the Plaintiff in the year 2017. The learned Arbitral Tribunal terminated the arbitration proceedings on 29th April, 2018 and it is only thereafter the Plaintiff filed the present Commercial Suit against the Defendant on 25th July, 2018.

3. The Defendant was also faced with complaints being filed by the Plaintiff before the concerned Police Station as well as the application filed by the Plaintiff before Metropolitan Magistrate, Andheri which directed the concerned Juhu police station to take cognizance of the matter and register the FIR which has thereafter being filed on 24th January, 2019. The Defendants accordingly filed

Writ Petition before this Court under Section 482 of the Code of Criminal Procedure, 1973 being Writ Petition No.4158 of 2019 on 27th February, 2019 which is pending before this Court. It is only thereafter that the Defendant received Writ of Summons in the present Commercial Suit on 17th November, 2021, i.e. after a period of over three years from the filing of the present Commercial Suit. The Defendants have also filed Written Statement in the matter on 16th December, 2021. In view of these events, the leave can only be granted to the Plaintiff, subject to the costs being imposed on the Plaintiff to tune of Rs.1,00,000/- which shall be paid to the Defendant.

4. Accordingly, the Commercial Suit No.1551 of 2018 is disposed of as withdrawn with liberty to file fresh suit before the appropriate Court subject to payment of costs of Rs.1,00,000/- by the Plaintiff by way of pay order made out in favour of the Defendant within a period of one week from the date of this Order.

5. In view of the withdrawal of the Commercial Suit, the Interim applications, if any, filed therein do not survive and are disposed of.

[R.I. CHAGLA J.]