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

+ CS(OS) 936/2015

M/S HERO MOTOCORP LTD Plaintiff

Through: Ms. Manmeet Kaur & Mr. Gaurav
Singh, Advocates.

versus

BANK OF BARODA & ANR Defendants

Through: Mr. Abhishek Gusain, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **19.02.2020**

I.A. 2408/2020(Application on behalf of plaintiff under Order XXVI Rule 10 of the CPC read with Section 45 and Section 73 of Indian Evidence Act for appointment of a handwriting expert alongwith accompanying affidavit)

I.A. 2409/2020(Application on behalf of plaintiff under Order XVI Rule 1(3) for amendment/modification of list of witnesses alongwith accompanying affidavit)

1. Issue notice. Mr. Abhishek Gusain, learned counsel for the defendants, accepts notice. These applications have been filed by the plaintiff seeking a directions for appointment of a handwriting expert to examine the documents on record, and to place on record an amended of the list of witnesses, including the handwriting expert so appointed.

2. In the original list of witnesses filed by the plaintiff, the plaintiff had *inter alia* sought to summon a Court Clerk from the concerned Court in Mumbai which is in siesin of SPL CASE CBI/100064/2015 [*The State CBI BS and FC vs. Vimal Jadhavji Maluka @ Vimal Barot & Ors*] pertaining to RC Case No.RC.06/E/2014-CBI/BSFC/Mum. It was stated that the required forensic reports have been filed on the record of the CBI Courts, for which purpose the said records were required to be summoned to this Court. The expert from the concerned forensic laboratory was also listed as a witness.
3. Upon inspection of the documents in the CBI Court, it has subsequently transpired that the forensic report, upon which the plaintiff seeks to rely, is not on record in the proceedings before the CBI Court. In these circumstances, the following order was passed on 08.01.2020:-

“1. The suit has been listed at the instance of the learned local commissioner, who was appointed to record the evidence by an order dated 23.08.2018.

2. The local commissioner has reported that recording of the plaintiffs evidence remains in progress. It was last recorded on 30.05.2019, after which the plaintiff has not produced any witness despite several dates having been fixed in the interregnum. In this view of the matter, the learned local commissioner seeks an extension of time for recording of the evidence, which, according to the directions of the Court, has to be concluded by 31.03.2020.

3. Learned counsel for the plaintiff submits that four witnesses for the plaintiff have been examined. The plaintiff's next witness, was to produce the record of the CBI Court, City Sessions Court, Greater Mumbai in SPL CASE CBI/100064/2015 (The State CBI BS and FC vs. Vimal Jadhavji Maluka @ Vimal Barot & Ors.).

Although the witness was summoned for 24.09.2019, the witness was unable to produce the record as it was stated to be a high security record. Learned counsel for the plaintiff states that she has inspected the record of the case before the CBI Court, and found that the forensic report upon which the plaintiff seeks to rely is not on record in those proceedings.

4. In these circumstances, the plaintiff intends to file an application for appointment of a forensic expert for examination of documents on the record of the present suit. The suit be listed before the local commissioner on the date fixed, i.e. 28.02.2020. The plaintiff is directed to take necessary steps in the meantime.

5. In these circumstances, the time for recording of the evidence is extended until 31.12.2020 for the present.”

4. Pursuant to the said order, the plaintiff has now filed the above-mentioned applications. The application for appointment of a handwriting expert states that the expert is required to examine “*the documents available on record and produce a Report which will have a direct bearing in the instant case*”. The plaintiff has not specified the documents required to be examined by the handwriting expert. There is also no explanation as to why the applications have been made at a belated stage, when the recording of evidence before the local commissioner was fixed for 28.02.2020. It appears that the plaintiff has not been diligent in taking steps, as required by the order dated 08.01.2020, in time.

5. In these circumstances, the plaintiff is directed to file a further affidavit in support of its application [I.A. 2408/2020] identifying therein the documents required to be examined by the handwriting expert. The said

affidavit be filed within one week, subject to payment of costs of ₹20,000/- payable to the Delhi High Court Bar Association Library Fund. The defendants will be entitled to file replies to these applications within two weeks thereafter. Rejoinder, if any, be filed within one week thereafter.

6. List on 30.03.2020.

7. The parties will request the local commissioner for an adjournment of the proceedings the date fixed i.e., 28.02.2020, until the next date of hearing before the Court.

PRATEEK JALAN, J

FEBRUARY 19, 2020'

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