

Witness duly sworn on 07.09.2022

Cross Examination by Sri.BNK, Advocate for Defendant No.2

I have been working as C and F agent of Defendant No.2 since 15 to 17 years. It is true to suggest that, we are bound by terms and conditions imposed by defendant No.2 while working as C and F agent of defendant No.2. It is true to suggest that, we have to pay rent for use of berth as per the terms and conditions.

2. It is true to suggest that, I requested defendant No.2 authority seeking permission for storage of fly ash. Witness further volunteers, defendant No.2 granted permission for storage of fly ash. It is true to suggest that, permission was granted by defendant No.2 subject to payment of rent and penalty clause. I do not remember with regard to non claiming of any relief against Defendant No.2, when suit was instituted before this court.

3. It is true to suggest that, defendant No.2 is not party to the contract entered into between plaintiff and defendant No.1 as per Ex.P.18. I do not remember with regard to submission of agreement marked at Ex.P.18 to defendant No.2. Ex.P.18 is the complete agreement document entered into between plaintiff and defendant No.1. Ex.P.6 is the letter written by the plaintiff to the estate manager of defendant No.2. We submitted Ex.P.6 letter to the estate manager of defendant No.2 informing about the differences between plaintiff and the defendant No.1.

4. It is true to suggest that, in Ex.P.6 we mentioned with regard to allotment of 4000 Sq.mtrs of area inside NMPT yard for

the purpose of storage of fly ash. It is true to suggest that, allotted area comes within the high security zone. It is true to suggest that, defendant No.2 has taken highest responsibility while allotting area comes within the high security zone.

5. It is true to suggest that, we accepted letter of conditions issued by defendant No.2 while granting permission to plaintiff as C and F agent. It is true to suggest that, defendant No.2 has authority to revise conditions and the rent. Duration of Allotment of 4000 Sq. mtrs of area mentioned in letter of allotment issued by defendant No.2. I do not remember the specific date of surrender of 2000 Sq.mtrs of allotted area in favour of allottee/defendant No.2. Witness further volunteers, we surrender 2000 Sq.mtrs of allotted area within 4 months from the date of allotment of 4000 Sq.mtrs.

6. Plaintiff availed revised allotment letter containing revised rent and penalty clause after the surrender of 2000 Sq.mtrs of area from defendant No.2. We surrendered 1700 Sq.mtrs of area in favour of allottee/defendant No.2. I do not say the exact date of surrender of 1700 Sq.mtrs in favour of defendant No.2. We shifted from the earlier allotted area to the new area consists of 350 Sq.mtrs at the request of the defendant No.2 for the purpose of development of allotted port area. It is true to suggest that, development activities are going on in the port area.

7. It is true to suggest that, defendant No.2 issued letter demanding license fee, rent and penalty. Witness further volunteers, we used to pay license fee and rent to defendant No.2, as defendant No.1 stopped payment, we were unable to pay license

fee to defendant No.2. It is true to suggest that, as per stipulated terms and conditions, we are liable to pay license fee to defendant No.2 irrespective of receipt of payment from our customers.

8. It is incorrect to suggest that, by Ex.P.28 defendant No.2 authority asked us to vacat the premises. Witness volunteers that, through Ex.P.28 defendant No.2 authority only asked us to shift from the premises. It is incorrect to suggest that, Ex.P.28 is the caution notice for vacating the premises. It is incorrect to suggest that, subsequent to Ex.P.28, defendant No.2 authority issued number of caution letters asking plaintiff to vacat the premises.

9. It is true to suggest that, we have not vacated from the NMPT premises. It is true to suggest that, in case of non compliance of conditions, we are liable to pay 3 times of license fee. I know the commercial importance of the area within NMPT premises. It is true to suggest that, we are liable to pay dues in favour of defendant No.2.

Cross Examination by Advocate for Defendant No.1

Cross examination of PW-1 is deferred at the request of counsel for defendant No.1.

(Typed to my dictation in the open court.)

R.O.I. & A.C.,

**I Addl. District & Sessions Judge,
Mangaluru, D.K.**