

**IN THE COURT OF CITY CIVIL FOR GREATER BOMBAY  
AT BOMBAY**

**ORDER BELOW EXH.46  
IN  
S.C.SUIT NO.1095 OF 2004**

**ORDER**

1. This speaking to the minutes of the order/clarification of order dated 14/09/2016 passed by this court in draft notice of motion of the plaintiff.
2. Heard the learned advocate for the plaintiffs as well as the defendant. It is submitted that as earlier while disposing of the notice of motion No.1379/2016 my learned predecessor has observed that the application for Court Commissioner be made and accordingly draft Notice of taken by the plaintiff and it is submitted that to avoid the contradictory order the present speaking to the minutes of order or the clarification of the order sought.
3. On going through both the orders, the order passed in Notice of Motion No.1379/2016 dated 01/07/2016 by my learned predecessor have observed that if the plaintiff no.2 is unable to attend the Court for plaintiffs can very well apply for appointment of Court Commissioner for recording her evidence. However, the notice of motion taken out for appointment of Commissioner by the plaintiff before this Court in which the order passed and observed that the plaintiff no.1(b) Nisha Gupta and doctor's certificate taken into consideration which reveals as there is a severe Kidney problem as Nephrotic Syndrome and suffering from forgetfulness and mental instability and it was also opined that the so patient cannot be put

:2: EXH.46 IN SUIT-1095/2004

under pressure or travel long distance and as such U/s.118 of Evidence Act unless the persons shall be competent to testify only if understand and giving rational answers to those questions, however due to illness and the old age the witness is unable to understand the question and answer the same and hence no purpose would be served by appointment of the Commissioner.

4. As such considering both the orders merely the Court has observed that the application for appointment of Commissioner can be made it does not mean that it is the direction and the same is to be allowed at the time of the said observation. The said medical certificate about the said witness was not available, I do not find any reason to interfere or clarify the order passed dated 14/09/2016. Hence, I pass the following order.

**ORDER**

1. Application Exh.46 stands disposed off accordingly.
2. Plaintiff is at liberty to take necessary steps for leading evidence in the light of the present facts of the case.

23/11/2016

Sd/-  
(P.M.NAGALKAR)  
AD-HOC JUDGE,  
CITY CIVIL COURT, MUMBAI

Dictated on : 23/11/2016  
Transcribed on : 24/11/2016  
Signed on : 03/12/2016

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGEMENT/ORDER”

UPLOAD DATE	TIME	NAME OF STENOGRAPHER
14/12/2016	01.30pm	B.R.HATEKAR S.G.