

IN THE BOMBAY CITY CIVIL COURT AT BOMBAY
NOTICE OF MOTION NO. 916 OF 2014
IN
SUIT NO. 8206 OF 1984

Aderbad Co-operative Housing
Society Limited

....Plaintiff

V/s.

1.MinooRustomji Shroff & Ors

....Defendants

Coram : His Honour Judge

Shri S.R.Jagtap

CR No.: 5

Adv.Ms. Bhatia for the plaintiff.

Adv.Shri. Dalal for the defendant nos.8 to 10

Adv.Ms.Veena Chaudhari for the defendant nos.1 to 7

ORAL ORDER

(Dated March 7th, 2014)

1. The defendant no.8 to 10 took out this notice of motion and sought leave to file additional affidavit of Mrs. Zinia Sorab Lawyer, the defendant no.9 in lieu of further examination in chief on the grounds set out in the affidavit filed in support of notice of motion.

2. The plaintiff has replied to this motion and has resisted the notice of motion on the grounds set out in the reply.

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3. I have heard the learned advocate Shri. Dalal for the defendant nos. 8 to 10 and learned advocate Ms. Bhatia for the plaintiff.

4. Considering the submissions advanced by the learned advocates appearing for the respective parties , following points arise for my determination and I have recorded my findings thereupon for the reasons to be followed.

Points	Findings
1.Whether the defendant nos.8 to 10 can be permitted to file additional affidavit of defendant no.9 in lieu of further examination in chief.?In the affirmative.
2.What order? As per final order.

REASONS

5. Epitome of argument of learned advocate Shri. Dalal for the defendant nos.8 to 10 is that it is not in dispute that the defendant nos. 8 to 10 have led evidence by filing additional affidavit of defendant no.9, but subsequently the defendant nos.8 to 10 have found original correspondence and same are necessary to be taken on record. The defendant nos.8 to 10 are entitled to lead evidence by filing additional affidavit of witness. He has placed his reliance on the following citations-

1.Smt. Shantibai K. Vardhan & Ors V/s. Ms. Meera G. Patel & anr.reported in 2009 (1) AIR BOM R 586

2.Mohanraj Rupchand Jain alias Chhajed V/s. Kewalchand Hastimal Jain & Ors reported in 2007 (7) LJSOFF 173

As per provisions of Order 17 Rule 3 of Code of Civil Procedure, the defendant nos.8 to 10 are entitled to file additional affidavit of witness. Lastly, learned advocate has submitted that the notice of motion may kindly be allowed.

6. An abridgment of argument of learned advocate Ms. Bhatia for the plaintiff is that the evidence of defendant nos.1 to 7 were completed way back in the year 2010. The defendant nos.8 to 10 were aware of the fact that they are required to lead evidence. Merely because the Court has not granted sufficient time for adducing evidence that does not necessarily mean that the defendant nos. 8 to 10 are entitled to file additional affidavit of witness. The defendant nos.8 to 10 were having sufficient opportunity to prepare affidavit of evidence of witness but they remained as silent spectator and therefore, the defendant nos. 8 to 10 are not entitled to file additional affidavit of witness. Lastly, learned advocate has submitted that the notice of motion may kindly be rejected.

7. At the outset, I would like to state that it is not in dispute that the defendant nos.8 to 10 have filed affidavit of evidence of defendant no.9 on 03.03.2014 alongwith compilation of documents. The defendant nos.8 to 10 simply want to lead evidence on the documents. According to defendants, there is no reference of the correspondence in

the affidavit of witness. In order to prove the correspondence the defendant nos.8 to 10 want to file affidavit of defendant no.9. It is significant to note that the cross examination of defendant no.9 is not yet commenced. Under such circumstances, to my mind the witness can file his additional affidavit of evidence in lieu of further examination in chief. Therefore, in view of ratio and dictum laid down by the Hon'ble High Court in a case *Smt. Shantibai K. Vardhan & Ors V/s. Ms. Meera G. Patel & anr.reported in 2009 (1) AIR BOM R 586.* the defendant nos.8 to 10 can be permitted to file additional affidavit of defendant no.9 in lieu of further examination in chief. I, therefore, answered point nos. 1 and 2 accordingly. Consequently, I proceed to pass following order.

ORDER

1. Notice of motion No.916/2014 is allowed.
2. Defendant nos. 8 to 10 are permitted to file additional affidavit of defendant no.9 in lieu of further examination in chief.

Date-06.03.2014

Date of Dictation : 06.03.2014
Date of Transcription : 07.03.2014
Date of signature : 12.03.2014
Date of delivery to C.C.S. :

(S.R.Jagtap)
Judge,
City Civil Court,
Gr.Mumbai,