

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

SUIT NO. 1304 OF 1986

Tirupati (Mahalaxmi) Co-op.
Hsg. Soc. Ltd. .. Plaintiffs.

Vs.
M/S Gowani Builders (Pvt) Ltd. & Ors. .. Defendants.

Mr. Akash Rebello a/with Mr. Keegan Almeida I/by M.T. Miskita &
Co. for Plaintiff.

Mr. D.V. Deokar a/with Mr. Pinakin Modi I/by M/s. Parimal K. Shroff
& Co. for Defendant No.1.

Mr. Firdosh Pooniwala a/with Mr. M.A.Kamdar I/by M/s. Kanga &
Co. for Defendant No.2.

Mr. Pradeep Bakhru I/by M/s Wadia Ghandy & Co. for Defendant
No.27 and Applicant in CHS No.376 of 2018.

CORAM : K.R. SHRIRAM, J.
DATE : 24th August, 2018.

1) Plaintiff and defendant No.1 have closed their evidence.

Witness of defendant No.2 is present in Court.

Name : : Kantilal Gowani (D.W.N.2)
Age : : 57 years,
Address : : Campbell House, Gopalrao Deshmukh Marg,
Mumbai 400 026.

On S.A.

Further Examination-in Chief by Mr. Firdosh Pooniwala for
Defendant No.2 :-

Per witness: I say that I have affirmed an affidavit dated 6th April, 2018 and identify my signature.

P.C. :- The affidavit is taken on record and marked **Exh.D-2/6** Through this witness, defendant No.2 proposes to introduce eight documents and serial number below relate to the compilation of the documents relied upon by the defendant No.2.

S. No.1 :- Mr. Rebello objects to this document as there are no sufficient averments in the affidavit of DW-2. Mr Pooniwala seeks leave to ask further questions in examination-in-chief. Leave granted.

(For convenience evidence is recorded in question and answer form)

Q. 1 :- Can you say something more about this document?

A : This is an order passed by the Municipal Corporation of Greater Mumbai giving no objection to sub-division of a larger plot mentioned therein. I say that all these approvals are sent by the MCGM to the Architect and copy thereof is given to the owner c/o Architect. The owner referred to in this document is Defendant No.2 and that is how I have got possession of this document. In view of this document received in evidence and marked **Exh. D-2/7**.

S. No.2 :- **“Y-1”** for identification.

S. No.3 and 4 :- Mr. Pooniwala and Mr. Rebello state that

these documents have already been received in evidence and marked Exh.D-2/4 collectively.

S. No.5 :- **Exh.D-2/8**.

S. No. 6 : **Exh.D-2/9**, collectively.

S. No.7 : **Exh.D-2/10**.

S. No. 8 : Mr. Rebello objects to this document because the plaintiffs are not parties to this document and secondly the averments in the affidavit are not sufficient to prove this document. Mr. Pooniwala seeks leave to further add questions in the examination-in-chief. Leave granted.

Q.1 : Who issued these receipts and how you came in possession of these receipts?

A : These documents are receipts which were issued when defendant No.2 settled the claim of those parties who have issued the receipts.

Q.2 : Who gave money to them?

A : I have personally handed over the cheques to each of the parties who have issued the receipts and the receipts were signed by those parties in my presence. The Receipts are taken on record and marked **Exh.D-2/11**, collectively.

2) The Commissioner appointed earlier shall continue to record evidence on the same terms and conditions. Cross-examination and Re-examination of DW 2 to be completed by 30th September, 2018. The Commissioner to mark the documents strictly according to the order passed above.

3) The Commissioner to fix minimum two/three dates per session for cross-examining DW-2. If the Advocates do not respond to the Commissioner's communication within 48 hours of receiving the communication suggesting the dates, the Commissioner to go ahead and fix the dates and the Advocates and the witness shall make themselves available on those dates. If the witness or the Advocates for defendants do not turn up, then the evidence of the witness should be closed and if the Advocates for plaintiffs do not turn up, then the cross-examination of DW-2 should be closed as 'no cross'. Once the dates are fixed, the Commissioner not to grant adjournment to any party on any ground whatsoever unless the situation is so grave that it warrants an adjournment and it should be for reasons recorded.

4) Mr. Pooniwala states that DW-2 is only witness and further states that list of witnesses of second defendant is already filed.

5) Stand over to 5th October, 2018 for directions.

(K.R. SHRIRAM, J.)