

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1226 OF 1986

Dr. Ravindra R. Trivedi and others ... Plaintiffs

Versus

Shri Shakti Prints Pvt. Ltd. and others ... Defendants

WITH

COUNTER CLAIM NO. 10 OF 2009

IN

SUIT NO. 1226 OF 1986

WITH

SUIT NO. 1439 OF 2009

Shakti Prints Pvt. Ltd. ... Plaintiff

Versus

Municipal Corporation of
Brihan Mumbai and others ... Defendants

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Mr. Rajesh Shah alongwith Ms. Gargi Bhagwat instructed by M/s. Divekar Bhagwat & Co., Advocate for the Plaintiff in S-1226-1986.

Mr. Malcolm Siganporia instructed by Mr. Deepak Chitnis-Chitphalkar, Advocate for the Defendants No.1 and 2 in S-1226-1986.

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CORAM : ABHAY AHUJA, J.

DATE : 17 JULY 2025

P.C. :

1. Today, this matter has been listed at 4.30 p.m. for marking of the Plaintiff's documents in Suit No.1439 of 2009.
2. Mr. Siganporia, learned Counsel, appears for the Plaintiff in

the Suit and submits that he appears for the Plaintiff in Suit No.1439 of 2009 and for the Defendant No.1 in Suit No.1226 of 1986.

3. The learned Counsel submit that on 14th January 2020, the admitted documents in the compilation dated 20th April 2012, have been marked. That although the witness Mr. Anupnarain Kapoor was not examined and although by the said order he was directed to remain present, however, it will not be possible to present him as witness and therefore, the Affidavit and the documents would be marked pursuant to the examination of Mr. Manmohan Parmeshwar Sarawgi (DW-2) and Mr. Vijay S. Khetan (DW-3).

4. Mr. Siganporia submits that Mr. Manmohan Parmeshwar Sarawgi (DW-2) is present in Court.

5. Mr. Manmohan Sarawgi, is administered oath by the learned Court Associate.

DW-2 :

Name : Manmohan Parmeshwar Sarawgi

Occupation : Service

Address : Shakti Prints Compound, Cardinal Gracious Road,
Chakala, Andheri (E), Mumbai 400 099.

Examination-in-chief of Mr. Manmohan Parmeshwar Sarawgi – DW-2 on S.A. :

(Witness is shown Affidavit in lieu of oral evidence dated 12th June

2025 under Order XVIII, Rule 4 of the Code of Civil Procedure, 1908 which has been interpreted by Sworn Interpreter of the High Court in Hindi on 12th June 2025 as indicated on page 6 of the said affidavit).

This is my affidavit. The contents of the Affidavit have been explained to me in Hindi as I am more fluent in Hindi than English. Referring to the original of the Authority letter, the witness submits that the authority letter dated 9th January 2023 was given to me by the Director of the Company and I am producing the original thereof. The contents of this affidavit are true and correct to my knowledge and belief. I have affirmed and verified this affidavit by signing at the foot of this affidavit. I identify my signature on this affidavit.

I am producing compilation of documents comprising of 44 documents. I have deposed to the said documents in my affidavit in lieu of oral evidence.

The witness has deposed to the truth and contents of the said affidavit. There are no questions in oral examination-in-chief.

6. The affidavit in lieu of oral evidence dated 12th June 2025 is taken on record and marked as **Exhibit D-18**.

7. Thereafter, this Court proceeds with the marking of documents at Serial No.3, 4, 5, 13, 14, 15, 15A, 16, 22 and 23 of the compilation of documents dated 20th April 2012.

8. The document at Serial No.3 is a photocopy of the Bill No.9/60 dated 3rd November 1960.

9. The witness has stated in paragraph 7 of his Affidavit that this is a document which was lost on 23rd November 2007 and that mention

of the same has been made in the complaint. It has been stated by the witness that he had taken a photocopy of the original bill and the photocopy of the bill is in two pages and the contents of the same are identical to the original bill.

10. Mr. Siganporia, learned Counsel for the Plaintiff in this Suit and for the Defendant No.1 in Suit No.1226 of 1986 submits that the photocopy be marked as an exhibit as secondary evidence as the witness has clearly stated that he has taken a photocopy of the original bill and that the contents are same and identical to those of the original bill. That Mr. Shah's client would in any event have an opportunity to cross-examine the witness and that therefore the document be marked as an exhibit.

11. Mr. Shah, learned Counsel for the Plaintiffs submits that the said document is not admitted as the Plaintiffs have given inspection only of photocopy and the original is not produced. That since it is a photocopy and also not legible, no case has been made out for leading secondary evidence, as the document is not proved by the witness.

12. Mr. Shah further submits that the Indian Evidence Act, 1872 would apply to this Suit as it is a Suit filed prior to the notification enacting the Bhartiya Sakshya Adhiniyam, 2023 (the "BSA"). Mr. Shah draws attention of this Court to Section 170 of the BSA and in

particular to sub-section (2) which clearly provides that notwithstanding the repeal of the Indian Evidence Act, 1872 and coming into force of the BSA, if there is any application, trial, inquiry, investigation, proceeding or appeal pending, then, such application, trial, inquiry, investigation, proceeding or appeal shall be dealt with under the provisions of the Indian Evidence Act, 1972.

13. Mr. Shah further submits that since the Indian Evidence Act, 1872 first requires the production of the original document and if the original document is not available, secondary evidence may be given. Mr. Shah submits that since the document at serial No.3 is a document, which has a stamp that it is certified to be a true copy and also signature of Pathak Associates, Advocates and Notary and neither original of the said document has been provided nor the same has been proved and therefore, the same cannot be exhibited.

14. Mr. Shah further submits that to prove what the document states and for the document to be exhibited, the requirement is that signature and handwriting must be proved. Mr. Shah submits that on pages 17 and 18 at the end there are signatures on behalf of National Engineering Services and that until and unless the signature and handwriting is proved in view of Section 67, the document cannot be exhibited. Mr. Shah has tendered before this Court decision of this

Court in the case of *Om Prakash Berlia and another vs. Unit Trust of India and others*¹, in support of his contentions. A perusal of the document clearly indicates that the same is a poor photocopy certified as true copy by the Advocate at the time of filing the said compilation. The witness has clearly stated in paragraph 7 of the Affidavit that he has made a photocopy of the original bill dated 3rd November 1960, which is in two pages and the contents of the same are identical to the original bill dated 3rd November 1960. A perusal of the Section 63 of the Indian Evidence Act, 1872 and in particular sub-sections (2), (3) and (5) cover the situation before this Court as with respect to the document at serial No.3, the witness has given a written account that he has made a photocopy of the original and also compared it with the original. Accordingly, the document being secondary evidence under Section 63 can be exhibited.

15. With respect to Mr. Shah's objection that under Section 67 of the Indian Evidence Act, 1872, if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting, it is true that there is a signature in the said document under the name of

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National Engineering Services, however since the witness has clearly stated that he himself had photocopied the bill and matched the contents as identical, in my view, the document can be exhibited. In any event, Mr. Shah would get an opportunity to cross-examine the witness with respect to the said signature at the time of recording of cross-examination of the Defendant's witness. Accordingly, objections raised by Mr. Shah cannot be accepted.

16. In view of the above discussion, I am inclined to accept the document at serial No.3 as secondary evidence and mark the same as **Exhibit D-19**, subject to opportunity to cross-examine the witness.

17. Since it is already 5.30 p.m., list on **3rd September 2025** for further marking of documents.

18. The witness (DW-2) is discharged for the day.

19. Let the witness remain present on the next date.

(ABHAY AHUJA, J.)