

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 1948 OF 1983
WITH
CHMABER SUMMONS NO. 96 OF 2016
IN
SUIT NO. 1948 OF 1983**

Sociedade De Fomento Indus. Pvt. Ltd. .. Plaintiff
Vs.
Tulsidas V. Patel Pvt. Ltd. & Ors. .. Defendants

Mr.Erach Kotwal, senior advocate a/w. Mr.Jayendra Kapadia and Ms.Gaurangi Pujara i/b M/s. Little and Co. for plaintiff.

Mr.Gaurav Joshi, senior advocate a/w. Ms.Falguni Thakkar and Ms.Prakruti Joshi i/b Doijode Associates for defendant Nos.1 and 7.

**CORAM : K.R.SHRIRAM, J.
DATED : 21ST AUGUST, 2017**

P.C.

1 At the outset, the counsel for plaintiff states that within two weeks from today, plaintiff will file their list of witnesses and also serve a copy thereof upon defendants. Plaintiff's witness Mr.Auduth Timblo (PW-1) is present in Court and is administered oath.

2 Further examination in chief of PW-1 by Mr.Kotwal, senior advocate for plaintiff :

Name : Auduth Timblo (PW-1)
Age : 68 years
Occupation : Business
Address : G9, La Marvel Colony, Dona Pawla, Goa 403 004.

On S.A.

I say that I have affirmed a further affidavit in lieu of examination in chief dated 21st August 2017 and also identify my signature.

PC: The affidavit is taken on record and marked as **Exh.P-4** for convenience.

By consent, the first three affidavits of examination in chief dated 14th July 2009, 26th July 2011 and 8th August 2011 are marked as **Exh.P-1**, **Exh.P-2** and **Exh.P-3**, respectively.

3 With Exh.P-4, plaintiff has filed a further compilation of 11 documents. The serial number below corresponds to the index to the further compilation of documents :

- 1 to 7 : **Exh.Q to Exh.W** respectively.
- 8 & 9 : **Exh.Z** and **Exh.AA**.
- 10 & 11 : **Exh.BB** and **Exh.CC**.

Mr.Joshi for defendant Nos.1 and 7 states that since the documents are apostilled documents/certified copies, except documents at Exh.BB and Exh.CC, the documents could be received in evidence but defendants do not admit the contents thereof and the same should be subject to cross-examination.

Mr.Joshi is justified in making this request. Therefore, it is clarified that the documents have been received in evidence subject to cross-examination by defendants.

3 The Commissioner appointed earlier to continue on the same terms and conditions. The costs incurred and to be incurred will be costs in the suit.

4 The Commissioner to complete recording of evidence of PW-1 by 31st October 2017.

The Commissioner to fix minimum two/three dates per session for cross-examining PW-1. 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 plaintiff do not turn up, then the evidence of the witness should be closed and if the Advocates for defendants do not turn up, then the cross-examination of PW-1 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.

Liberty to apply.

(K.R. SHRIRAM, J.)