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

SUIT NO.1948 OF 1983

Sociedade De Fomento Indus Private Limited ..Plaintiffs.

Versus

Tulsidas V. Patel Private Limited & Others ..Defendants.

Mr.Erach Kotwal and Nahush Shah & Ms.Gaurangi Pujara i/by M/s.Little & Co. for the plaintiffs.

Mr.G.R. Joshi with Ms.Kalyani Thakkar with Ms.Priyanka Kothari i/by Doijode Associates for defendant Nos.1 and 7.

CORAM : R.Y. Ganoo, J.

DATE : 23rd August, 2011.

P.C. :

1. It is the plaintiffs case that a news item came to be published in the Times of India, Bombay Edition on 31st January 1975, with a heading "Big yarn-smuggling racket busted". The plaintiffs want to bring on record this news item. Similarly, the plaintiffs claim that an advertisement was also published in the Times of India, Bombay Edition on 24th September 1983, thereby informing the members of the public at large that the building in which the suit flat is situated is ready for possession. In order to prove these two newspaper cuttings, the plaintiffs have tendered in Court a certificate dated 23rd August 2011 purported to have been executed by Mr.M. Vasudeo Rao, AVP – Legal and Secretarial of Times of India Group, Benett & Colomen

Company.

2. Learned Counsel for the plaintiffs took me through the provisions of Section 65-B of the Indian Evidence Act, as also the Certificate dated 23rd August 2011 and submitted that the requirements of the provisions of Section 65-B have been fulfilled and on the strength of the certificate issued by Mr.Rao, the newspaper cuttings which are relied upon by the plaintiffs should be marked as exhibit.

3. Learned counsel appearing on behalf of defendant Nos.1 and 7 submitted that mere production of the said certificate is not sufficient and the requirements of the provisions of sub-section (4) and in particular the language, *“purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it”* are not complied with. Learned counsel Mr.Joshi, therefore, submitted that mere production of the certificate across the bar will not be sufficient compliance so far as sub-section (4) of Section 65-B and, therefore, the newspaper cuttings cannot be exhibited on the strength of the certificate dated 23rd August 2011.

4. I have heard learned counsel on both the sides. Mr.Rao has

certified on the letter-head of the Times of India Group and according to the counsel for the plaintiffs, the said certificate is sufficient compliance. In my view, a certificate as is sought to be produced across the bar cannot be treated as a sufficient compliance under Section 65-B, particularly because a bare reading of the certificate nowhere goes to show that the person who has issued the said certificate is falling within the ambit of the portion, which is quoted above i.e. he occupies a responsible official position in relation to the operation of the relevant device or the management of the relevant activities. The certificate also does not mention that whatever is stated in the said certificate is to the best of the knowledge and belief of the person stating.

5. For these reasons, the certificate as it is cannot be accepted. If at all it is the case of the plaintiffs that Mr.Rao was a person authorized to issue certificate and he has issued the said certificate so as to comply with the requirements of Section 65-B, it will be open for the plaintiffs to examine Mr.Rao, so that he would state as to in what authority he has issued the said certificate as also whatever information which is provided in the said certificate is to the best of his knowledge and belief etc.

6. For these reasons, right now I am not inclined to mark this document as exhibit. It will be open for the plaintiffs to prove the document in the aforesaid manner or by any other method.

7. The certificate tendered by the learned counsel for the plaintiffs

is taken on record and it is marked as "X-5" for identification along with annexures.

8. The Court is informed that the evidence is to be recorded through the Commissioner. Parties will approach the Commissioner, fix an appointment with the Commissioner and go ahead with the recording of evidence. Time to record evidence before the Commissioner is extended for the time-being upto 30th November, 2011.

(R.Y. Ganoo, J.)