

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

SUIT NO. 295 OF 2012

Kaizer Taher Mithaiwala .. Plaintiff
Vs.
Shamima Taher Mithaiwala & 4 Ors. Defendants

Mr. Govind Bajirao Pawar for plaintiff.
Mr. J.S. Kini a/w. Hetvi Nishar i/b Sunila Chavan for defendant No.1.
Mr. Prem S. Gidwani for defendant Nos. 2, 3 and 5.
Mr. Sualeh Nagvadaria for defendant No.6.

CORAM : N.J. JAMADAR, J.

DATE : 28th JANUARY 2021

PC.

1. The plaintiff- Kaizer Taher Mithaiwala himself is the plaintiff's first witness, present in Court and is administered oath.

Name : Kaizer Taher Mithaiwala (PW-1)
Age : 54 years.
Add. : Shams Palace, 601, 6th Floor, Hill Road,
Bandra (West), Mumbai 400 050.

On S.A.

Further examination in chief of PW-1 :

Documents in Schedule-A

1. The document at Sr. No.1 is the Public Notice dated 12-11-2008, published in Free Press Journal, Mumbai dated 12-11-2008.

The document at Sr. No.1 is marked as **Exh.P-1/32**, subject to objection on behalf of defendant Nos.1, 2, 3, 5 and 6. (In view of

averments in para 22 of Exh.P-1/1).

2. The document at Sr. No.3 is a Handwritten Note purported to be executed by defendant No.2 dated 16-05-2008.

The document at Sr. No.3 is marked as **Exh.P-1/33**, excluding the draft of Power of Attorney. (In view of averments in para No. 15 of Exh.P-1/1.)

3. The document at Sr. No.10 is a communication from the office of Sub-Registrar and Administrative Officer for Mumbai City dated 27-12-2013.

The document at Sr. No.10 is marked as **Exh.P-1/34**, subject to objection of defendant Nos.1, 2, 3, 5 and 6. (In view of averments in para No. 62 of Exh.P-1/1.)

4. The document at Sr. Nos.11 and 12 are the communications emanating from the office of Deputy Inspector General, Mumbai Division and Sub-Registrar and Administrative Officer for Mumbai City, dated 31-12-2013 and dated 15-01-2014, respectively.

The documents at Sr. No.11 and 12 are marked as **Exh.P-1/35**, and **Exh.P-1/36**, subject to objection of defendant Nos.1, 2, 3, 5 and 6. (In view of averments in para No. 64 and 65 of Exh.P-1/1.)

5. The document at Sr. Nos.13 is the communication addressed by the Sub-Registrar to the plaintiff on 4-02-2014 and the document at Sr. No.14

is the communication addressed by Assistant Junior Registrar, Mumbai dated 1-10-2014.

The documents at Sr. Nos.13 and 14 are marked as **Exh.P-1/37** and **Exh.P-1/38**, subject to objection of defendant Nos.1, 2, 3, 5 and 6. (In view of averments in para Nos. 67 and 70 of Exh.P-1/1.)

6. The documents at Sr. Nos.17 and 18 are the Newspaper Articles' cuttings.

The same are marked as **Article A and B** for identification.

7. The document at Sr. No.23 is a reply dated 1-06-2014 issued by Public Information Officer to the witness.

The document at Sr. No.23 is marked as **Exh.P-1/39**. (In view of averments in para Nos. 57 of Exh.P-1/1.)

8. The documents at Sr. No.24 is the receipt, dated 11-06-2014 in respect of payment of charges of information under Right to Information Act.

The document at Sr. No.24 is marked as **Exh.P-1/40**. (In view of averments in para Nos. 57 of Exh.P-1/1.)

Documents in Schedule-B

9. The document at Sr. No.6 is an office copy of letter dated 16-12-2013 addressed by the witness to the Joint Sub-Registrar, Mumbai.

The document at Sr. No.6 is marked as **Exh.P-1/41**. (In view of

averments in para Nos. 61(i) of Exh.P-1/1.)

10. The document at Sr. No.7 is an office copy of letter dated 16-12-2013 addressed by the witness to the Sub-Registrar, Mumbai District City-1.

The document at Sr. No.7 is marked as **Exh.P-1/42**. (In view of averments in para Nos. 61(ii) of Exh.P-1/1.)

11. The document at Sr. No.8 is an office copy of letter dated 16-12-2013 addressed by the witness to Dr. Manik Gursal, Deputy Inspector of General of Registration.

The document at Sr. No.8 is marked as **Exh.P-1/43**. (In view of averments in para Nos. 61(iii) of Exh.P-1/1.)

12. The document at Sr. No.9 is an office copy of letter dated 31-12-2013 addressed by the witness to the Collector of Mumbai.

The document at Sr. No.9 is marked as **Exh.P-1/44**, subject to objection on behalf of defendant Nos.1, 2, 3, 5 and 6. (In view of averments in para Nos. 63 of Exh.P-1/1.)

13. The document at Sr. No.10 is an office copy of letter dated 2-04-2014 addressed by the witness to the Collector of Mumbai.

The document at Sr. No.10 is marked as **Exh.P-1/45**. (In view of averments in para Nos. 68 of Exh.P-1/1.)

14. The document at Sr. No.11 is an office copy of letter dated 10-04-2014 addressed by the witness to the office of the Asstt. Commissioner.

The document at Sr. No.11 is marked as Exh.P-1/46. (In view of averments in para Nos. 69 of Exh.P-1/1.)

15. The document at Sr. No.12 is an office copy of letter dated 27-01-2014 addressed by the witness to the Collector of Mumbai City.

The document at Sr. No.12 is marked as Exh.P-1/47. (In view of averments in para Nos. 66 of Exh.P-1/1.)

16. The document at Sr. No.20 is a photocopy of Criminal Writ Petition No. 1645 of 2014.

17. The document at Sr. No.20 is marked as Article C for identification.

18. The document at Sr. No.22 is a photocopy of Anticipatory Bail Application No. 146 of 2014.

The document at Sr. No.22 is marked as Article D for identification.

19. The document at Sr. No.24 is a photocopy of Criminal Complaint o. 259/SW-2013.

The document at Sr. No.24 is marked as Article E for identification.

20. The document at Sr. No.25 is a photocopy of certified copy of order dated 1-04-2014 passed in Anticipatory Bail Application No. 146 of 2014.

The document at Sr. No.25 is marked as Exh.P-1/48. (In view of averments in para Nos. 48 of Exh.P-1/1.)

21. The document at Sr. No.27 is the copy of the letter dated 4-09-2013 addressed by the Additional Chief Metropolitan Magistrate to the Senior

Inspector of Police incorporating the order of the Court.

The document at Sr. No.27 is marked as **Exh.P-1/49**. (In view of averments in para Nos. 43 of Exh.P-1/1.)

22. The document at Sr. No.28 is a photocopy of the application under Right to Information Act, 2005.

The document at Sr. No.28 is marked as **Article F** for identification.

23. The document at Sr. No.29 is a photocopy of the lis pendens notice.

The document at Sr. No.29 is marked as **Article G** for identification.

24. The document at Sr. No.34 is a photocopy of RTI application.

The document at Sr. No.34 is marked as **Article H** for identification.

Further examination in chief is completed.

25. The cross-examination be recorded on commission.

26. By consent, Mr. V.M. Parkar, an Advocate practicing in this Court is appointed as a Commissioner and is requested to record the cross-examination of the plaintiff's first witness within a period eight weeks.

(a) The Commissioner is at liberty to exercise discretion under Order XVIII Rule 4(4) of the Code of Civil Procedure, 1908, to note the demeanour of the witnesses where necessary.

(b) All cross-examination shall be conducted strictly in question and answer form.

(c) The Commissioner will also be at liberty to direct that the

whole or any part of the cross-examination should be video recorded for later reference of the Court. Should that be done, the original audio visual recording will be submitted along with the Commissioner's Report to the Registry.

(d) Liberty to the parties as also to the Commissioner to apply in case of difficulty.

(e) All re-examination will be conducted only in Court.

(f) Costs of the commission shall be borne equally by the parties.

(g) Parties shall also pay costs of Rs.500/- per hearing to the Court Clerk who attends the Commission with Court Papers. This is required since these clerks attend the commission in addition to their duties and outside their normal working hours.

(h) The Commissioner shall not permit any application for adjournment on dates previously fixed, except where absolutely unavoidable. Counsel's inconvenience or unavailability does not constitute such unavailability.

27. Stand over to 25th March 2021.

[N.J. JAMADAR, J.]