

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

SUIT NO.466 OF 1991

Chittaranjan Damodardas ShahPlaintiff

Vs.

Bombay Housing & Area Development Board & Anr.Defendants

Mr. Rohaan Cama a/w. Mr. Shanay Shah, Mr. Lalit Katariya, Mr. G.B. Mohanty and Ms. Nimisha Ghetla I/b. Katariya and Associates for plaintiff.
Mr. P.G. Lad a/w. Ms. Aparna Murlidharan and Ms. Sayli Apte for defendants.

CORAM : K.R.SHRIRAM, J.

DATE : 11th OCTOBER 2018

P.C.:

Name : Viral Chittaranjan Shah (PW-2)

Age : 62 years

Occupation : Physician

Address : 2501, Vikas Towers, Walkeshwar, Mumbai – 400 006

on S.A.

Further examination-in-chief of PW-2 by Mr. Cama :

I say that I have affirmed an affidavit dated 29th September 2018 in lieu of examination in chief and also identify my signature.

P.C. : The same is taken on record and marked **Exhibit P-2/85.**

Through this witness, plaintiff is bringing on record 19 documents and the serial numbers given below relate to the index to the compilation of documents filed through this witness :

<i>Sr. No.</i>	<i>Exhibit Numbers</i>
1	Mr. Lad, counsel for defendants states that this document is

	insufficiently stamped but is unable to show what according to defendants should be the stamp duty. Therefore, objection overruled and the document is received in evidence and marked <u>Exhibit P-2/86</u>
2	<u>Exhibit P-2/87</u>
3	<u>Exhibit P-2/88</u>
4	<u>Exhibit P-2/89</u>
5 and 6	<u>Exhibit P-2/90 and Exhibit P-2/91</u>
7	<u>Exhibit P-2/92</u>
8	<u>Exhibit P-2/93</u>
9	<u>Exhibit P-2/94</u>
10 to 12	<u>Exhibit P-2/95 to Exhibit P-2/97</u> , respectively
13	<u>Exhibit P-2/98</u>
14	X-5 for identification
15	To the extent that it contains the signature of the witness and that of his father, this document is received in evidence and marked <u>Exhibit P-2/99</u> . As a clarification only the signatures are received in evidence. The rest are marked X-6 for identification
16	X-7 for identification
17	<u>Exhibit P-2/100</u>
18	X-8 for identification
19	X-9 for identification

At this stage, Mr. Cama, on instructions states that there were issues regarding the payment of fees to the Commissioner by defendants. Mr. Lad states that as soon as the invoices are received, the fees of the Commissioner will be paid. Mr. Cama, on instructions states that the

invoices must have raised because plaintiff's advocates have received the invoices and therefore, the question of not having raised invoices upon defendants does not arise.

Therefore, the Commissioner – Ms. Priyanaka Patel shall, if invoices have already been raised, give a photocopy thereof to defendants' advocates and if not raised already, raise the invoices within one week from today and give it to defendants' advocates. Mr. Lad states that within two weeks of receiving the invoices, the fees of the Commissioner shall be paid. It is made clear that if the invoices are not paid within the two weeks period, the defence of defendants will be struck off and defendants will not be permitted to cross examine any of the witness.

The Commissioner - Ms. Priyanaka Patel to continue on the same terms and conditions. The fees, administrative expenses of the Commissioner together with typing charges and venue charges, if any, to be shared equally between the parties, 50% by plaintiff and 50% by defendants and the same together with costs already incurred will be costs in the suit.

The Commissioner to endeavor to complete recording of evidence of PW-2 by 31st December 2018. The Commissioner to fix minimum two/three dates per session for cross examination of PW-2. If the parties do not respond promptly within 48 hours of receiving a communication from the Commissioner suggesting the subsequent dates, the Commissioner to go ahead and fix the dates convenient to the

Commissioner and the parties shall make themselves available at the time and dates fixed by the Commissioner. If plaintiff or the witness does not remain present, the Commissioner should close the evidence of PW-2 as not made available for cross and if defendants do not remain present to cross examine the witness, defendants' cross examination should be treated closed as no cross. Once the dates are fixed, the Commissioner not to grant adjournment on any ground whatsoever.

Mr. Cama requests that the original of the documents be returned. Mr. Lad has no objection so long as the witness gives an undertaking to produce the original documents during the cross examination and during the hearing of the suit or at any stage, if called upon by defendants or by the Court. Mr. Cama, on instructions gave such undertaking on behalf of the witness.

Therefore, plaintiff may apply to the Prothonotary and Senior Master, High Court, Bombay for return of the original documents subject to supplying correct and legible photocopies duly endorsed as true copy by the advocates for plaintiff. The Prothonotary and Senior Master to return the original documents after satisfying himself that the photocopies represent correctly the original documents and the undertaking is also noted.

Stand over to 4th January 2019 for directions.

(K.R. SHRIRAM, J.)