

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO.2256 OF 1998**

Harinarayan G. Bajaj and Anr. ... Plaintiffs
versus
Vijay Agarwal and Ors. ... Defendants

Mr. Kunal Dwarkadas i/by Mr. R.V.Sharma, for Plaintiffs.
Mr. M. Agre i/by Mr. G.B.Kedia, for Defendant No.3.

**CORAM: S.J. KATHAWALLA, J.
DATE: 19th SEPTEMBER, 2016**

P.C.:

1. On 2nd August, 2016 this Court passed the following order :

"1. In the above matter, the cross-examination of PW-1, commenced on 18th March, 2014. The same has continued upto 7th June, 2016. During the course of the cross-examination, 335 questions have been asked to PW-1 in over 17 sessions, spanning over almost two and half years.

2. Due to paucity of time, this Court is unable to spare any more time to record further cross-examination of this Witness. In view thereof, the Court is desirous of appointing a Court Commissioner to record the cross-examination of PW-1.

3. The learned Senior Advocate appearing for Defendant Nos. 1, 2, 4 and 5 has requested the Court to record the cross-examination of PW-1 in Court inter alia on the ground that the Witness is not cooperating in the matter. Though the Witness on certain occasions found it difficult to comprehend the questions put to him and answer them to the point, I am of the view that it cannot be said that he is intentionally doing so in order to avoid giving answers or to delay the matter. The Suit is of the year 1998 and deserves to progress

expeditiously. It is therefore, difficult to accede to the request of the learned Senior Advocate appearing for Defendant Nos. 1, 2, 4 and 5. In view therefore, the following order is passed :

- i. Mr. Salil Shah, Advocate is appointed as Commissioner to record further cross-examination of PW-1.
 - ii. The learned Commissioner shall endeavour to record the cross-examination of PW-1 at least thrice a week between 5.30 p.m. to 7.30 p.m. and submit his report to this Court on 31st August, 2016.
 - iii. Cost of the Court Commissioner shall be borne by the parties equally.
- Stand over to 31st August, 2016."

2. However, today I am informed that in the last six weeks the learned Commissioner has recorded the evidence of the witness only on four occasions. In view thereof, the learned Commissioner is once again requested to endeavour recording the cross-examination of P.W.1 at least thrice a week between 5.30 p.m. to 7.30 p.m. and/or at any mutually convenient time. It is clarified that the Commissioner shall not grant long adjournments on the ground that the Counsel appearing for the parties are not available. The Commissioner shall file his Report before this Court on 30th September, 2016. Stand over to 30th September, 2016.

(S.J.KATHAWALLA, J.)