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

Harinarayan G. Bajaj & Another ...Plaintiffs

Versus

Vijay Agarwal and others ...Defendants

Ms. Sonal i/by Mr. Vivek Sharma, for the Plaintiffs.
Mr. Rajesh Shah i/by Mr. G.B. Kedia, for Defendants No.1, 2, 4 and
5.

CORAM : G.S. Patel, J.
Monday, 10th February 2014.

P.C. :

1. The matter is listed for marking of documents in evidence. Ms. Sonal, learned advocate for the plaintiffs, tenders a two-volume compilation of original documents and the affidavit dated 6th January 2014 in lieu of examination-in-chief of Harinarayan G. Bajaj, the 1st plaintiff. The matter is taken up for marking of the plaintiffs' documents.
2. The references in the following order are all to the plaintiffs' compilation of documents. Where a serial number is referenced, it is a reference to the index to the plaintiffs' compilation of documents.

3. Sr.No. 1: This is a photocopy of a sample contract note. Mr. Shah, learned advocate for defendants Nos. 1, 2, 4 and 5, contends that this is an incomplete document, because it refers to the printed matter said to be overleaf. Ms. Sonal has the original bound volume from which this has been taken. In the original, too, there is no matter printed overleaf. The objection is over-ruled. The original is marked as Exhibit "P1". For the convenience, the bound book is returned back and the photocopy produced by Ms. Sonal is taken on record. This is identical to the original.

4. Sr. No. 2: This is a copy of notice issued by the Bombay Stock Exchange to its members. The witness has deposed that his son who was, at the relevant time, a member of the stock exchange had received this notice. This is admittedly a photocopy and not a certified true copy. The document is marked as "X1" for identification.

5. Sr. Nos. 3 to 41: These documents are all contract notes or settlement bills issued at different times. Some of these are properly signed; some are entirely unsigned on every page; and some have only been signed on the last of several pages comprising a single set.

(a) The documents at Sr. Nos. 6, 7, 10, 12, 15, 21, 27, 28, 31 and 37 are entirely unsigned. They are marked "X2" (collectively) for identification.

(b) Sr Nos. 3 and 4. These are documents signed only on the last page and not on the previous or earlier pages. Mr. Shah submits that these cannot be admitted without a signature on each page. I find, on a

examination of documents, that all the earlier pages are continued on the following pages. This is clearly indicated by the words “C/F” or “carried forward” on the previous pages. This indicates that all these are the multiple pages of a single document. The last page of these documents is indeed signed, for both sets at Sr.Nos. 3 and 4.

- (c) Mr. Shah’s next objection is that this signature, as also the signature on the other documents that are fully signed is not or cannot be conclusively said to be the signatures of the persons authorized to sign the documents. He further submits that even assuming that the person was duly authorized, the introduction of these documents only establishes the signature on the documents and not the correctness of their contents.

- (d) In my view, there is no substance to these submissions. It is true that only the author of a document can depose to the correctness of its contents. That would be so in case of a document such as a letter, for example. But these are routine commercial transactions, and they reflect a transaction initiated by one of the two parties to the document. Where there are two parties to a document and a settlement bill or a contract note is exchanged under the signature of one to the other, the transaction being initiated by one of the two parties involved, the evidence of the person who signed the document cannot be said to be the only method of

proving the correctness of the document. In the affidavit in lieu of examination in chief, the witness has identified the signature on each page, where there is a signature. Each bill is said to depict a transaction conducted by the witness himself through one Akhil Dalal Broking House on the Bombay Stock Exchange. He has acknowledged receipt of the bill by signing on it. He has deposed to the correctness of the contents of the bills in question. Similarly, as regards the contract notes, he has identified the signatures thereon. He has also deposed that the contract notes are in respect of the transactions conducted by the witness through the broking concern of Akhil Dalal and has stated that the contents are true and correct to the best of his knowledge. It would, in my view, be thoroughly unreasonable to ask the plaintiffs to adduce the evidence of the broker to depose to the correctness of the contents of such documents when, clearly, the deponent of this affidavit is equally placed to do so. These are all matters to his personal knowledge. The mechanical act of transcribing a transactional detail on paper cannot require only the evidence of the signatory and jettison entirely the evidence of the person who caused those transactions to take place. Given the nature of these transactions, I am inclined to mark these documents in evidence. The defendants will have full opportunity to cross-examine the witness in respect of these documents.

- (e) Mr. Shah relies on a decision of a learned Single Judge of this Court in *Madholal Sindhu V/s. Asian Assurance Company Limited*.¹ That decision is an authority for the proposition, too well established to require reiteration, that in order to prove the correctness of the contents of a document it is insufficient merely to prove the handwriting or signature on that document. The witness must depose to the correctness of the contents of that document to his knowledge. What Mr. Shah overlooks is that the witness in question in that case was one who was acquainted with the signature but admittedly had no knowledge about the correctness of the document. This is not the case here. The witness has personal knowledge of the transactions in question. They were effected at his instance. He knows them to have been done, and knows that the record of their being done is correct. This decision is, therefore, of no assistance of Mr. Shah.
- (f) Mr. Shah then relies upon a Division Bench judgment of this Court in the matter of *Mr. D & Mr. S., Advocates*.² In that decision, a Division Bench of this Court held that the identification of a signature on the document is insufficient to prove the document. Where the signatory has not deposed to the truthfulness of the contents of the document, this document cannot be treated as proof. Here, too, I do not believe the decision assists Mr. Shah in any way. The deponent has indeed

¹ AIR 1954 Bombay 305

² 1961 (LXVIII) The Bombay Law Reporter 228

deposed to the correctness of the documents in question, and has not merely identified a signature.

- (g) Mr. Shah finally relies upon a decision of the Supreme Court in *Bishwanath Rai V/s. Sachhidanand Singh*.³ In that case, examining the question of relevancy of a particular testimony, the Supreme Court reversed the finding of the High Court on the question of a certain letter. The Supreme Court stated that the contents of the letter were proved by the evidence of the witness, who said he knew the writing of the author of that letter. The Court held that the evidence was sufficient to prove that the author wrote the letter and that the statements in the letter were made by the author himself. However, this did not, in the absence of examination of the author, prove the truthfulness of these statements. The present case is totally different. In this particular case, the deposition of the witness is not only based on his personal knowledge and familiarity with the signature on the documents, but also on his personal knowledge of the correctness of the contents and the transactions they reflect. These transactions are the purchase of shares at the stock market. They were undertaken at the instance of the plaintiffs. The signatures on the documents are of those persons of the broking house through whom the plaintiffs effected these purchases. The statements only reflect the purchases that were put through by the 1st plaintiff himself while a member of the stock

³ AIR 1971 S.C. 1949

exchange. It is impossible to say in these circumstances that the witness could never have personal knowledge of the contents referred to in these documents, though he may not have signed them. It is not out of place to mention that both the contract notes and the statement bills are all computerised documents. Ex-facie, this only bares out the execution or placing of instructions by the 1st plaintiff himself. In my view, therefore, these documents that are signed on the last page, i.e., Sr. Nos.3 and 4 of the index of compilation of documents and all other documents upto Sr. No. 41, except those marked for identification as aforesaid, are required to be marked in evidence as **Exhibit “P2” (collectively)**.

6. **Sr. No. 42:** This document is marked **“X3” for identification.**

7. **Sr. No.43 to 53:** These documents are marked **“X4” for identification.**

8. **Sr. No.54:** This document is marked as **Exhibit “P3”.**

9. **Sr. Nos. 55 to 57:** These are, respectively, the office copy of a letter dated 9th January 1998 from the 1st plaintiff to the Bank Manager, Bank of Maharashtra, Delisle Road Branch; the postal receipt in respect thereof; and the acknowledgment card. These have been referred to in paragraph 77 of the affidavit in lieu of examination in chief. Mr. Shah submits that admittedly there is no pleading in respect of this letter or its acknowledgment. He refers to the affidavit in lieu of examination in chief to point out that the

witness himself has stated that no mention has been made in the plaint about these documents, where the witness has said that since the suit was filed in May 1998 and that at that time no accounts had been opened nor had any documents relating to the opening of the accounts be misused by defendants No.1 to 5, he was advised against including these details as they were thought to be unimportant. Mr. Shah contended that the plaintiffs would need to amend the plaint to add these particulars. He says that this portion of the evidence travels beyond the pleadings, and that there is foundation laid in the pleadings for either this testimony or these documents. I am unable to accept this submission. This document (and its acknowledgment) seems to be a link completing a chain in the evidence. In the plaint, the plaintiffs have sufficiently set out the actions of defendants No.1 to 5 and in respect of which he seeks reliefs. Pleadings are not to contain the evidence on which a party relies. It is always open for a party to adduce a full set of evidence at the time of giving his testimony. As I see it, the plaintiffs seek to read this letter in evidence to complete the evidentiary trail. The letter was written by the plaintiff himself. What was produced is an office copy of that document. It must be marked. The documents at Sr. Nos. 55 to 57 of the index of compilation of documents are marked as **Exhibit “P4” (collectively)**.

10. **Sr. No.58 and 59**: These are, respectively, the office copy of the letter addressed by the plaintiffs to the 1st defendant on 12th January 1998 and the postal receipt in respect thereof. These have been deposed to by the plaintiffs in paragraph 78 of the affidavit in lieu of examination in chief. They are marked as **Exhibit “P5” (collectively)**.

11. **Sr. Nos. 60 to 62:** These are, respectively, the office copy of letter dated 19th January 1998 from the plaintiffs to the 1st defendant; the postal receipt and acknowledgment card. These are marked as **Exhibit “P6” (collectively).**

12. **Sr. No. 63:** By consent, the document is marked as **Exhibit “P7”.**

13. **Sr. Nos.64 to 66:** These are, respectively, the office copy of plaintiffs’ advocates’ letter dated 5th February 1998 to the 1st defendant, and the postal receipt and acknowledgment card in respect thereof. These are marked as **Exhibit “P8” (collectively).**

14. **Sr. No. 67:** By consent, this document is marked as **Exhibit “P9”.**

15. **Sr. No. 68:** This document is marked as **Exhibit “P10”.**

16. **Sr. No. 69:** By consent, this is marked as **Exhibit “P11”.**

17. **Sr. No. 70:** This document is marked **“X5” for identification.**

18. Issue No.1 of the issues settled on 17th June 2013 will need to be slightly corrected to read as follows :

“1. Whether the plaintiffs agreed to purchase 3,07,650 shares of defendant No.14 on the four settlement Nos. 23, 24, 25 and 26 of 1998/1998 of BSE

through defendant Nos.8 to 18 for net payment of Rs.5,62,50,000/- which was to be made on or before 25th September 1997 ?”

- (a) Issue No.4 will need to be re-cast and split into two issues as follows :

“4A. Whether the plaintiffs pledged other shares as additional security ?

4B. Alternatively, whether the other shares form part of a separate and independent transaction, and if so, on what terms ?”

19. Stand over to 3rd March 2014 at 3.00 p.m. for evidence.

(G.S. Patel, J.)