

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

Harinarayan G. Bajaj & Anr. ...Plaintiffs
Versus
Vijay Agarwal & Ors. ...Defendants

Ms. Sonal i/b. Mr. Vivek M. Sharma, Advocates, for the Plaintiffs.
Mr. Girish Kedia a/w. Ms. Ujawala Karpe and Mr. Krushang Kedia,
Advocates, for the Defendant Nos.1, 2, 4 and 5.
Mr. Yatin Bhogilal Shah, P.W.4, present.

CORAM: MADHAV J. JAMDAR, J.
DATED: 5th JULY 2024

P. C.:

1. Ms. Sonal, learned Counsel appearing for the Plaintiffs states that the Plaintiffs' Witness No.4-Yatin Bhogilal Shah is present in Court to give his evidence. The said witness is administered the oath. The details of this witness are as follows:

P.W. 4:
Name : Yatin Bhogilal Shah
Age : 57 years
Occupation : Retired
Address : D-202, Veena Sargam, Mahavir Nagar,
Dahanukarwadi, Kandivali (West),
Mumbai- 400 067.

On S. A.:
Examination-in-chief by Ms. Sonal, learned Counsel for the Plaintiffs:

I say that I have affirmed the affidavit in lieu of examination-in-chief dated 4th September 2023 which is now shown to me. The signature on the said affidavit is my signature. The contents of the said affidavit in lieu of examination-in-chief are true and correct.

Examination-in-chief of the P.W. 4 is completed.

2. Ms. Sonal, learned Counsel appearing for the Plaintiffs states that five documents produced at Sr. Nos.21, 27, 28, 31, and 37 are referred in the paragraph Nos.7 to 11 of the affidavit in lieu of examination-in-chief of P.W. 4-Yatin Bhogilal Shah. She states that all these documents are marked as 'X2' for identification. She points out Order dated 7th September 2023 passed by a learned Single Judge (Coram: Milind N. Jadhav, J.). She submits that the learned Single Judge by said order has marked similar documents as exhibits. She more particularly points out paragraph No.6 of the said Order dated 7th September 2023 of the learned Single Judge.

3. Mr. Kedia, learned Counsel appearing for the Defendant Nos.1, 2, 4, and 5 objects to the marking of these documents as

exhibits, on the ground that none of the documents are signed. Mr. Kedia also raises several objections as recorded by the learned Single Judge in the said Order dated 7th September 2023.

4. It is required to be noted that all these documents have been referred to in paragraph Nos.7 to 11 of the said affidavit in lieu of examination-in-chief. In paragraph No.1 of the affidavit in lieu of examination-in-chief, the P.W. - 4 has stated that he is the son of late Bhogilal Shah and the nephew of Kirti J. Shah. It is further stated that his father and his uncle had a broking membership in the Bombay Stock Exchange and that he was a partner in the said broking partnership held by them in the name of his father Bhogilal J. Shah at the relevant time when the transactions were executed. Detailed contentions are raised in paragraph Nos.7 to 11 with respect to the documents at Sr. Nos.21, 27, 28, 31, and 37. The documents produced are original.

5. The reasons recorded in paragraph No.6 of the Order dated 7th September 2023 passed by the learned Single Judge which Ms. Sonal, learned Counsel appearing for the Plaintiffs has relied on, are also applicable to these documents. In the said Order dated 7th

September 2023, the learned Single Judge has considered and dealt with Mr. Kedia's objections, in paragraph Nos.7 and 8 which read as under:

"7. I agree with Mr. Kedia and his submissions that initial burden of proving the subject trades contained in the 4 documents will be on the Plaintiffs. Considering that the 4 documents are originals the existence of the documents stand proved and the said documents are therefore marked as Exhibit "P-37 to P-40".

8. It is clarified that the subject trades appearing in the documents marked "P-37 to P-40" shall be proved by Plaintiffs and in that event it shall be open to the contesting Defendants namely Mr. Kedia's clients to effectively cross-examine the Plaintiffs' witness on the same in accordance with law."

6. Considering the fact that the original documents are produced and for the reasons set out in the said Order dated 7th September 2023 of the learned Single Judge, the said documents produced at Sr. Nos.21, 27, 28, 31, and 37 are marked as Exhibit Nos.P41 to P45 respectively subject to Deponent proving the contents of these 5 documents.

7. Ms. Priyanka Kothari was earlier appointed as Court Commissioner to record evidence. She is appointed as Court Commissioner to record cross-examination of P.W. - 4.

8. Mr. Kedia, learned Counsel appearing for some of the Defendants, states that 16 weeks were granted to complete the cross-examination of P.W. - 3. He states that as far as the cross-examination of P.W. - 4 is concerned, in fact, some more time will be required as there are several entries in the documents. However, considering that the Suit is of the year 1998, the learned Court Commissioner is requested to complete recording of evidence of P.W. - 4 - Yatin Bhogilal Shah within a period of 16 weeks. The following directions are also issued concerning recording cross-examination of P.W. - 4:

(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 witness where necessary.

(b) Entire cross-examination shall be strictly conducted in the 'question and answer' method.

(c) Costs of the Commission shall be equally borne by the parties.

(d) 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 regular duties and beyond their regular working hours.

9. After marking the exhibit numbers on the original documents, original documents be handed over to the learned Advocate appearing for the Plaintiffs on the condition that notarized copies of these original documents will be filed in this Court within 3 days thereafter and that copies of the same will be provided to the learned Counsel appearing for the Defendants within one week.

10. Stand over to **25th October 2024**.

[MADHAV J. JAMDAR, J.]

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