

*Arjun*

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

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Ms. Sonal a/w Mr. Vivek M. Sharma i/b Vivek M. Sharma, for the Plaintiffs.

Mr. Girish Kedia a/w Ujawala Karpe, for the Defendant Nos.1, 2, 4 & 5.

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**CORAM: MADHAV J. JAMDAR, J.**

**DATED: 13 DECEMBER 2024**

**P.C.:**

1. Heard Ms. Sonal, learned Counsel for the Plaintiffs and Mr. Kedia, learned Counsel for the Defendant Nos.1, 2, 4 and 5.
2. Ms. Sonal, learned Counsel for the Plaintiffs has tendered photocopy of the Memorandum of Understanding dated 1st January 1996 executed between the Creative Finance Ltd. and PW-5. The said document is already marked as Exhibit D-36 in the Criminal Case No.346/SS/05 pending in the 40th Court of Metropolitan Magistrate, Girgaum, Mumbai subject to objection.
3. Mr. Kedia, learned Counsel for the Defendant Nos.1, 2, 4 and 5 submitted that apart from the other objections to take on record the

said document in evidence, the said document is not the original document. The said document cannot be produced as secondary evidence as procedure prescribed under Section 66 of the *Indian Evidence Act, 1872* (“**Evidence Act**”) is not complied with. Said Section 66 reads as under:-

**“66. Rules as to notice to produce.—** *Secondary evidence of the contents of the documents referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, [or to his attorney or pleader,] such notice to produce it as is prescribed by law, and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:*

*Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—*

- (1) when the document to be proved is itself a notice;*
- (2) when, from the nature of the case, the adverse party must know that he will be required to produce it;*
- (3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;*
- (4) when the adverse party or his agent has the original in Court;*
- (5) when the adverse party or his agent has admitted the loss of the document;*
- (6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.”*

(Emphasis added)

Section 66 *inter alia* provides that if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case can be given. In the evidence Affidavit dated 21st November 2024 reference is made to the said Memorandum of Understanding dated 1st January 1996. Thus, there is adequate notice regarding the said document.

4. Apart from the above aspect, proviso to Section 66 of the Evidence Act specifies that the notice shall not be required in order to render secondary evidence admissible *inter alia* when in the nature of the case, the adverse party must know that he will be required to produce it. In the evidence Affidavit dated 21st November 2024 in Paragraph No.21 it is specifically mentioned that original of said Memorandum of Understanding is with the Defendants. Thus, in this particular case, requirement of notice under Section 66 of the Evidence Act is not necessary. In any case, under Section 66 of the Evidence Act there is wide power to the Court to dispense with notice under Section 66.

5. This matter was argued for some time in the morning session and thereafter it has been kept back to ascertain from the Defendants whether the original of the said Memorandum of Understanding dated 1st January 1996 produced by the PW – 1 is with the Defendants. In the

afternoon session after taking instructions, Mr. Kedia, learned Counsel for the Defendants states that the original of the said document is with the Defendants. He states that the same will be produced on the next date in this Court.

6. It is the submission of Mr. Kedia, learned Counsel that the said document cannot be read in evidence as it is insufficiently stamped. The said objection can be considered on the next date after the Defendants produced original of said Memorandum of Understanding dated 1st January 1996.

7. Accordingly, the Defendants are directed to produce the original of said Memorandum of Understanding dated 1st January 1996 on the next date.

8. Stand over to **16th January 2025**.

**[MADHAV J. JAMDAR, J.]**