

Kavita S.J.

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 a/w Mr. Vivek Sharma for the Plaintiffs.

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

CORAM : R.I. CHAGLA, J.

DATED : 25th APRIL, 2025.

ORDER:

1. The Suit has been placed for marking of additional documents which are pursuant to the Order dated 21st March, 2025. The PW-5 is presently re-examined and Affidavit has been filed. Further Affidavit in lieu of Examination-in-Chief has been filed by PW-5.

2. First of the documents is a Photocopy of MoU signed between Creative Finance Limited and PW-5 marked as D-36 in Case

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No.346/SS/05 in the 40th Metropolitan Magistrate Court, Girgaum. This document was considered by this Court and by the said Order dated 31st March, 2025, time was granted to file additional Affidavit of PW-5 on this document.

3. The additional Affidavit of PW-5 has been filed on 27th March, 2025. It is stated in the said Affidavit that the original MoU which was taken on record and marked as Exhibit-D-1/10 is a tampered document and subject to certain changes having been carried out after execution. Reference is made to the last page of the document which bears the stamp of "Creative Finance Company Proprietor". PW-5 has stated that stamp was not there when he signed the document. He has further stated that the stamp of "Creative Finance Company Proprietor" has been subsequently put by or at the behest of Mr. Vijay Agarwal, to falsely show payment of consideration for his father's Girgaum Flat as explained by him in detail in his Affidavit of Evidence dated 24th November, 2024. He has stated that he had never put his signature on the word "Proprietor". He has put his signature in the empty space below it, assuming that the said stamp had been affixed and was present on the said document before he put his signature on the last page of the

same.

4. The Additional Affidavit dated 27th March, 2025 is taken on record.

5. Mr. Kedia, learned Counsel appearing for the Defendants has denied the contents of the Additional Affidavit of Evidence.

6. The objections raised on behalf of the Defendants for taking this document on record and marking of this document in evidence is that the MoU which is now sought to be produced by the PW-5 is a photocopy and there is no reference to the photocopy of the said MoU in the Suit either by the Plaintiffs or the Defendants. Further, the photocopy of the said MoU is not the subject matter of the present Suit. The MoU was executed between “Creative Finance Limited” and PW-5 and both are not parties to the present Suit. Therefore, this cannot be exhibited.

7. Having considered the contents of the Additional Affidavit of Evidence of MoU dated 27th March, 2025 and the reason for producing photocopy of the copy of the MoU as well as aforementioned

objection taken by Mr. Kedia on behalf of the Defendants, the said MoU being a copy of the original MoU cannot be taken on record and marked as an Exhibit in the Suit. The original MoU has already been taken on record and marked as Exhibit-D-1/10 and the photocopy of the said MoU cannot now be exhibited. It is open for the Plaintiffs to argue on the validity of the original MoU. Further, it is also open to the Plaintiffs to cross examine the Defendants' witness to bring up the issue of validity of the original MoU.

8. Considering that the original MoU marked as Exhibit-D-1/10 is an unstamped document, it is impounded and the Registry shall send the original MoU marked at Exhibit-D-1/10 to the Collector of Stamps, Mumbai for adjudication of Stamp Duty. Upon which the issue of payment and Stamp Duty shall be determined on the subsequent date.

9. Mr. Kedia has accordingly handed over the original MoU marked as Exhibit D-1/10.

10. The remainder of the documents are those which PW-5 had

produced by way of Affidavit in lieu of Examination-in-Chief and to which the objection is on the ground of relevance. These documents shall be taken on record and marked as Exhibits by keeping open the issue of relevance. Accordingly, these documents are marked as under :

Sr. No.	Date	Particulars	Exhibit No.
2	12/11/97	Copy of letter addressed by Anil Shah Securities & Finance Ltd. To Defendant No.4 (Serial No.51 in the Compilation of Documents filed by PW-1)	P-46
3	24/11/97	Original Delivery Challan issued by Defendant No.4 and received by PW-5 (Serial No.52 in the Compilation of Documents filed by PW-1)	P-47
4	03/12/97	Original Delivery Challan issued by Defendant No.4 and received by PW-5 (Serial No.53 in the Compilation of Documents filed by PW-1)	P-48
5	09/01/98	Acknowledged office copy of letter addressed by PW-5 to the Manager, Bank of Maharashtra, Delisle Road Branch	P-49
6	13/01/98	Original acknowledgment card received by PW-5 from the postal department	P-50

11. Ms. Priyanka Kothari, Advocate of this Court who had been appointed as Commissioner for recording of cross examination of the other witnesses in the above Suit, is by consent of the parties appointed as Commissioner for recording of cross examination of PW-5.

12. The appointed Commissioner shall make an endeavour to complete the recording of cross examination PW-5 by 15th July, 2025. This shall be subject to the Collector of Stamps, Mumbai adjudicating the stamp duty payable on the original MoU marked as Exhibit-D-1/10 and which adjudication shall be completed within a period of six weeks from today.

13. The Registry shall serve the notice of this order on the Collector of Stamps, Mumbai.

14. The Suit shall be placed for submission of the Commissioner's Report as well as for further directions on 21st July, 2025 at 2.30 p.m.

15. The original documents which have been produced by the PW-5 and which have been marked in evidence, are returned to the

PW-5 upon undertaking that, PW-5 shall produce the original documents as and when the Court requires the same.

16. It is pertinent to note that Mr. Kedia has handed over the original MoU marked as Exhibit-D-1/10.

[R.I. CHAGLA, J.]