

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

SUIT NO. 1862 OF 2002

Shri Ram Salve, Proprietor of M/s.
Ganesh Container Movers Syndicate ... Plaintiff.

V/s.

M/s. Mitsui O.S.K. Lines Ltd., & Ors. ... Defendants.

Mr. B.G. Vaidya a/with U.G. Shelke i/by Shelke & Co. for the
Plaintiff.

Mr. Zubin Behramkamdin, a/with Ms. Poorva Garg i/by Mulla
& Mulla & CBC for the Defendant Nos. 1 and 2.

Mr. Ram Baburao Salve, 63 years, R/at. Flat No. One,
Bhaveshwar Sagar, 20th Nepeansea Road, Mumbai-36, is
present.

**CORAM : K. R. SHRIRAM, J.
DATE : 16th OCTOBER, 2015**

P.C. :

1 The plaintiff's list of witness is taken on record. The
plaintiff has only one witness.

2 At the outset, as further leave was granted on 22nd
September, 2015, the counsel for the plaintiff tenders further /
additional affidavit of PW-1, affirmed on 7th October, 2015 in
lieu of examination-in-chief.

3 Shri Ram Baburao Salve, (PW-1) is present in the court and he is administered oath. On oath, PW-1 confirms having affirmed the additional affidavit dated 7th October, 2015 and also identifies his signature. The same is taken on record and marked Exh. P-1A.

4 Along with Exh. P-1, the Plaintiff has also filed a compilation of documents. The serial numbers given below relate to the index filed alongwith the compilation of documents :

- Sr. No. 1 : Exh. P-2.
- “ “ 2 : Exh. P-3.
- “ “ 3 : Exh. P-4.
- “ “ 4 : Exh. P-5.
- “ “ 5 : Exh. P-6.
- “ “ 6 : Exh. P-7, subject to proof of truth of contents.
- “ “ 7 : Exh. P-8, subject to proof of truth of contents.
- “ “ 8 : Exh. P-9.
- “ “ 9 : Exh. P-10.
- “ “ 10 : Exh. P-11.
- “ “ 11 : Exh. P-12, subject to proof of truth of contents.

- “ “ 12 : Exh. P-13.
- “ “ 13 : Exh. P-14.
- “ “ 14 : Exh. P-15, subject to proof of truth of contents.
- “ “ 15 : Exh. P-16.
- “ “ 16 : Exh. P-17, subject to proof of truth of contents.
- “ “ 17 : Exh. P-18, subject to proof of truth of contents.

5 Alongwith Exh. P-1-A, the plaintiff has also tendered further compilation with list of documents (Part -II). The documents mentioned in this list are : (i) The copy of the cheque dated 22nd April, 2002, and (ii) the copy of the bank return memo of Sumitomo Mitsui Banking Corporation. These are only photocopies and no ground is laid as to why secondary evidence should be permitted. Therefore, these documents are marked “X-1” and “X-2”, respectively, for identification.

6 The counsel for defendant nos. 1 and 2 states that even assuming that defendant no.3 had entered into MOU with the plaintiff, it was done without an acknowledgement of defendant no.1, who was principal of defendant no.3 and, therefore, even if the documents are received in evidence, it should be subject to the cross-examination by defendant nos. 1 and 2. It goes without saying that the defendants will

certainly be entitled to cross-examine the plaintiff on the contents of all the documents.

7 Mr. Dharmesh Jain, Advocate, is appointed as Commissioner to record evidence in the matter. The fees, administrative expenses of the Commissioner, venue expenses, if any, to be shared equally between the parties i.e. 50% by the plaintiff and 50% by defendant nos. 1 and 2 and the same will be costs in the suit.

8 The Commissioner to complete recording of evidence of PW-1 latest by 31st December, 2015. As far as possible, the Commissioner should fix at least three consecutive dates for recording evidence and once the dates are fixed, not to grant an adjournment on any ground whatsoever to any party, unless the situation is so grave that the hearing cannot take place.

(K.R.SHRIRAM,J.)

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