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

**SUIT NO. 1186 OF 2007**

Bharat Shantilal Shah & Anr. ...Plaintiffs.

Vs.

The Royal Palms (India) Pvt.Ltd & Ors. ..Defendants.

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Mr. Hiralal Thakkar, Sr. Counsel with Mr. Vibhav  
Krishna and Ms. Laxmi Mordekar i/b M/s Juris Consillis,  
for the Plaintiffs.

Mr. Iqbal Chagla, Sr. Counsel with Mr. Pesi Modi  
Mr. Naval Agarwal, Neville Lashkari, Ms. Y. Khanwilkar,  
Ms. Dimple Shah and Tejas Joshi i/b M/s  
Mulla & Mulla & C.B. & C., for the Defendants.

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**CORAM: A.A. SAYED, J.**

**DATE : MARCH 14, 2012.**

**P.C.:**

Further Cross-examination of Witness Mr. Bharat Shantilal Shah (Plaintiff  
No.1) by Mr. Iqbal Chagla, learned Senior Counsel on behalf of the  
Defendants.

(Shown para 26 of Affidavit in lieu of Examination-in Chief)

**102.** Question: Do you agree that the letter of termination 29.1.2003 was withdrawn/revoked by Mr. Mahesh Ayare ?

Ans. Yes.

**103.** Question: Do you know Mr.Mahesh Ayare was the lawyer representing the Defendants.

Ans. Yes.

**104** Question: Did you ask Mr. Mahesh Ayare, if he had the authority to withdraw the letter of termination ?

Ans. I did not ask.

(The Witness volunteers) Mr. Samir Sanghavi had asked Mr. Mahesh Ayare whether he had the authority to withdraw the termination letter and he said that he had the authority.

**105.** Question: Was the withdrawal of termination confirmed by the Defendants in writing at any time ?

Ans. I do not remember.

(Shown Compilation of Documents)

**106.** Question: From the documents on record which have been exhibited, can you tell us whether there is any document in writing from the Defendants confirming the withdrawal of termination ?

Ans. I do not find any such letter from the record.

(The Witness volunteers) However, there is a Minutes of Meeting.

**107.** Question: Are the Minutes referred to above, a document sent by the Defendants ?

Ans. No.

(Shown Plaintiff and Exhibit "P-10"-Bill dated 27.9.2011)

**108.** Question: Is this the same Bill which is referred by you in your Plaintiff at page 34 para 22 ?

Ans. Yes.

**109.** Question: According to you, would it be correct to say that similar Bills were submitted to all the other purchasers ?

Ans. Yes.

**110.** Question: How were these Bills submitted to other purchasers ?

Ans. The Bills were handed over to me by the lawyer of the Defendants in the office of Mr. Samir Sanghavi and these Bills have remained with me.

**111.** Question: What do you mean when you state in the Plaint that similar Bills were submitted to all the other purchasers ?

Ans. The Bills were in the name of other purchasers but they were handed over to me.

**112.** Question: According to you the Bills so given to you were misplaced by the Plaintiffs and their group ? Is that correct.

Ans. Yes.

**113.** Question: If all the Bills given to you were misplaced, how have you got Exhibit “P-10” ?

Ans. I found one Bill only with me and because of the raid which was carried out, the other Bills could not be located.

**114.** Question: What was the raid you have referred to ?

Ans. The raid I am referring was by the Customs Department, Income Department, Sales Tax Department, etc.

**115.** Question: Is there any reason why you have not mentioned the fact of this raid in the plaint ?

Ans. There is no reason.

**116.** Question: Is there any reason why you have not mentioned in your Plaint that all the Bills were given to you ?

Ans. I did not find it necessary to do so.

(Shown para 22 of the Plaint in Suit No.1317 of 2007)

**117.** Question: Would it surprise you to know that Rashesh Shah in the Plaint in Suit No. 1317 of 2007 has claimed in para 22 that the Bill dated 30.6.2003 given to him has been misplaced by the Plaintiffs and their group ?

Ans. Since the Bills were misplaced by me, therefore, he has stated that the Bills are misplaced by the Plaintiffs and their group.

**118.** Question: Can you explain why the Bill which Rashesh Shah says was misplaced, has come from your custody ?

Ans. Rashesh Shah is my son and we are sitting in the same office and I found one Bill and not the other Bills.

(Shown Exhibit "P-10"-Bill dated 27.9.2011)

**119.** Question: Is it correct that you are claiming Plot No.5 as having been sold to you ?

(Mr. Thakkar, learned Senior Counsel for the Plaintiffs objects to the question as being irrelevant for the purposes of deciding the issue of

limitation. Mr. Chagla, learned Senior Counsel for the Defendants, points out para 25 of the Affidavit of Evidence in lieu of examination-in-chief, wherein according to him, this aspect has been stated by the Witness himself.

On reading para 25, I find that since this aspect has been stated by the Witness himself and therefore the Defendants would be entitled to cross examine him on this point. The objection would be unsustainable.)

Ans. I do not remember.

( Shown para 4 of the Complaint )

**120.** Question: According to you, what was the number of the Plot that was sold to you ?

Ans. Plot No.81.

(Shown para 25 of the Affidavit in lieu of Examination-in-Chief)

**121.** Question: Which statement is correct? The statement made in your Affidavit in lieu of Examination-in-Chief dated 24.10.2010 viz. that Plot No.5 was agreed to be sold to you **or** the answer you have given to the previous question that what was agreed to be sold to you was Plot No.81.

Ans. I cannot say. I will have to check the record and give the answer.

**122.** Question: Can you tell the Court how you are able to answer Question No.120 i.e. what was agreed to be sold to you was Plot No.81, without examining your papers ?

Ans. In some of Bills that have been issued by the Defendants the plot nos. have not been mentioned correctly and therefore I will have to check the records.

**123.** Question: According to you therefore without checking your records, you are not in position to say in respect of which plot your suit for specific performance is based ?

Ans Yes.

**124.** Question: Since you claim to be in possession of the plot agreed to be sold to you, can you tell the Court whether it is Plot No.5 or Plot No.81 ?

Ans I will check my records and then I can answer the question.

( As Court time is over, by consent, stand over to 3<sup>rd</sup> April, 2012 at 3 p.m.  
for further cross-examination.)

**(A.A. SAYED, J.)**