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

SUIT NO.1186 OF 2007

Bharat Shantilal Shah and another. ..Plaintiffs
-versus-
The Royal Palms (India) Pvt.Ltd. and others. ..Defendants

WITH

**SUIT NOS.1194/2007, 1258/2007, 1259/2007, 1267/2007,
1268/2007, 1269/2007, 1689/2007, 1724/2007, 1725/2007,
1740/2007, 1741/2007, 1180/2008, 1182/2008, 1208/2008 AND
1737/2008**

.....

Mr.Vaibhav Krishna i/by Juris Consillis, for the Plaintiffs.
Mr.Iqbal Chagla, Senior Advocate a/w Mr.Pesi Modi, Mr.Naval Agarwal,
Mr.Neville Lashkari, Ms.Dimple Shah, Mr.Tejas Joshi i/by M/s Mulla &
Mulla & Craigie Blunt & Caroe, for the Defendants.

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CORAM : S.C.DHARMADHIKARI, J.
Date : 20th December, 2011.

1 Cross Examination of Mr.Bharat Shantilal Shah (Plaintiff No. 1), Age : 68 years, Occupation : Business, resident of 5C, Swapnalok, Nepean Sea Road, Mumbai-400006; by Mr.I.M.Chagla, learned Senior Counsel appearing on behalf of the Defendants.

P.C.:

2 Prior to commencement of Cross-Examination, my attention is invited to the order dated 27.09.2011 and it is contended by Mr.Chagla that the statements in the affidavit in lieu of Examination in Chief and particularly in paragraphs 4, 5, 6 (page 3), 7 & 8 (page 4), 14 (page 7),

18 & 19 (page 8, 20 (page 9), 24 (page 11), 26 (page 13), 28 & 29 (page 15), 30 (page 17), 32 (page 18) and 34 (page 20), should not be taken as Deponent tendering the documents or this Court marking them as exhibits, because what has been concluded by the order dated 27.09.2011 is an exercise of admission and denial of documents and marking them as exhibits.

Needless to state that the statements made in this affidavit shall be read subject to the order dated 27.09.2011. Except for the documents which are marked as exhibits, other documents referred to in the affidavit in lieu of Examination-in-Chief shall not be taken as marked as exhibits or admitted by the Defendants.

(S.C. Dharmadhikari, J)

[Shown paragraph 1 of the affidavit in lieu of Examination in Chief]

3 Apart from engaging in the businesses of Trading, Export and Import of diamonds, I am engaged in real estate business and film production. When I say that I am in real estate business, I mean involved in lot of construction projects. The construction projects are of residential as well as commercial buildings.

4 I am familiar with Agreements regarding sale and purchase of Immovable properties and the sale and purchase of flats.

[Shown paragraph 13 of the affidavit in lieu of Examination in Chief and also Exhibit P/39]

5 There is no plan annexed to the Agreement (Exhibit P/39).

6 The witness volunteers that “the plan is not enclosed to this

agreement because at the time of discussion, the Defendants had already shown the plan to the Plaintiffs.”

7 I deny that my statement in paragraph 13 of the affidavit in lieu of Examination in Chief (Exhibit P/1) is false.

8 I have given instructions to my Advocate to file this suit and equally all pleadings therein on my behalf.

9 I cannot say why in any of the pleadings, there is no reference to my statement that the plan was not annexed to the Agreement (Exhibit P/39) because it was already shown to me during the negotiations and discussions. The plan, that was not annexed to Exhibit P/39, but was shown to me during the discussion, has been produced in the course of some application in this very suit and proceedings.

10 I will not be able to recollect as to when the plan, which was shown prior to the agreement or at the time of its execution, has been produced in this Court, but same has been produced at the time of filing of the suit.

[Shown the Plaint and Annexures in Suit No.1186/2007]

11 The plan at page 73 of this paper book is not the one which has been shown to me prior to the Agreement (Exhibit P/39) dated 27.09.1993.

[Shown paragraph 2 of the plaint]

12 The plan which I have referred as shown to me prior to the Agreement dated 27.09.1993 or during the course of its execution is not Annexure A/1 or A/2 to the plaint.

13 There is another plan which was shown to me before the Agreement (Exhibit P/39) was executed, but that plan is not there in the

record.

[Shown paragraph 17 of the affidavit in lieu of Examination in Chief]

14 The termination notice dated 29.01.2003 was invalid and my statement in paragraph 17 of the affidavit in lieu of Examination in Chief is correct.

[Shown paragraph 22 of the affidavit in lieu of Examination in Chief]

15 The meetings that are referred to in paragraph 22 were in the year 2003.

16 The notice of termination dated 29.01.2003 was withdrawn in the meetings which have been referred to by me in paragraph 22 of my affidavit in lieu of Examination in Chief.

17 The notice of termination was withdrawn in one meeting, but there were subsequent discussions and meetings between the Plaintiffs and Defendants.

18 The meeting referred to in paragraph 22 between myself, Anoop Mehta and Amir Nancy is not mentioned in the plaint or in the affidavit filed in the Notice of Motion because I thought it was not necessary as there was subsequent correspondence between the Plaintiffs and Defendants.

[Shown paragraphs 18 and 26 of the affidavit in lieu of Examination in Chief]

19 My statement in paragraphs 18 and 26 is correct and not what has been set out in paragraph 22 of my affidavit which was shown to

me earlier because I did not recollect the date of meeting held in the year 2003.

20 There is no discrepancy in or omission in referring to the names, but as there were several meetings, the names of Anoop Mehta and Amir Nancy are referred to in the context of those meetings and not with reference to the meeting dated 03.07.2003.

21 The affidavit in lieu of Examination in Chief (Exhibit P/1) was prepared as per my instructions, it was shown to me and its contents were also duly explained before the same was filed in the Court.

[Shown paragraph 19 of the affidavit in lieu of Examination in Chief]

22 It is not correct that the Defendants demanded payment of taxes for the period prior to 29.01.2003.

23 The Witness volunteers that “as per agreement the taxes could have been demanded only after infrastructure was provided. Since some amount was paid at the time of execution of the Agreement (Exhibit P/39) the maintenance was to be paid provided the infrastructure was given.”

[Shown Exhibit P/29]

24 By the letter dated 08.02.2003 (Exhibit P/29), the taxes demanded were prior to 29.01.2003.

[Shown paragraph 20 of the affidavit in lieu of Examination in Chief]

25 It is true that the statement dated 15.02.2003 refers to the demand from 22 purchasers of the sum of Rs.37,95,480/-. As far as the

Plaintiff is concerned, the share demanded is same as indicated in the letter dated 08.02.2003.

26 It is true that the taxes were not paid by me, but the reason for the same is that no infrastructure and facilities were provided, therefore, I refused to pay the same.

P.C.:

27 The Cross-Examination is incomplete as the Court time is over. By consent, stand over to 11th January, 2012 at 03:00 pm..

(S.C. Dharmadhikari, J)