



charges, maintenance of landscaping and other amounts after the entire infrastructure is complete, I am referring to clause 9 of the Agreement (Exhibit P-39). The infrastructure was not completed by the Defendants.

(Shown Exhibit P-25 dated 19.05.2002)

29 The contents of the letter dated 19.05.2002 and particularly the penultimate paragraph thereof were not disputed by the Plaintiffs in writing. However, we made several oral complaints to the Defendants in that behalf.

(Shown Exhibit P-26 dated 16.08.2002)

30 It is true that the arrears of maintenance as on 16.08.2002 were to the tune of Rs.12,66,940/-. The Plaintiffs did not raise any objection in writing with regard to the Bill dated 16.08.2002 (Exhibit P-26), although the Bill required the Plaintiffs to raise all objections in writing.

31 The witness volunteers that “there were certain oral objections raised that once the infrastructure is provided and ready, the maintenance amount will be paid”.

(Shown Exhibit P-27, letter dated 29.09.2002.)

32 It is true that the Plaintiffs did not object to the amount mentioned in the Exhibit P-27 in writing, but it was orally informed to the Defendants that the amount will be paid only after the infrastructure is provided.

(Shown Exhibit P-27/A, letter dated 22.10.2002)

33 The Plaintiffs did not deem it necessary to object in this letter

(Exhibit P-27/A) to the amount of maintenance claimed by the Defendants because they orally informed the Defendants on several occasions that the maintenance amount will be payable only after the infrastructure is provided and not otherwise, as per the Agreement (Exhibit P-39).

34 The letter (Exhibit P-27/A) was written only to clarify that since Mr.Amir Nancy was not in town, the Plaintiffs and the Defendants would meet after he returns to Mumbai.

35 It is true that the Plaintiffs understood the letter dated 29.09.2002 (Exhibit P-27) as threat of the Defendants to terminate the Agreement being Exhibit P-39.

36 It is true that the paragraph in the letter dated 22.10.2002 (Exhibit P-27/A) commencing from the words “moreover” and ending with “how you can terminate the same”, refers to the default alleged by the Defendants with regard to non payment of maintenance charges.

37 There have been several meetings with Mr.Amir Nancy after his return to Mumbai and particularly after October, 2002.

38 In these meetings with Mr.Amir Nancy it was explained to him that the maintenance charges would be paid only after the infrastructure is provided.

(Shown plaint in the Suit No.1186/2007 and the affidavit in lieu of Examination in Chief)

39 It is true that in the plaint and the affidavit in lieu of Examination in Chief, there is no reference to a complaint by the Plaintiffs about non payment of maintenance charges in the meetings with Mr.Amir Nancy, but there is reference to the meetings with Mr.Amir Nancy.

(Shown Exhibit P-35, letter dated 21.01.2003)

40 It was informed to Mr.Samir Sanghavi, Chartered Accountant, that the maintenance charges under the Agreement were payable only after the infrastructure is provided and the demand of the Defendants was contrary to the same.

(Shown Exhibit P-28, letter dated 29.01.2003)

41 I will not be able to tell today as to what transpired in the meeting held on 26.10.2002 which is referred to in this Exhibit P-28.

42 The statement in the letter that the matter is unresolved and no solution could be found, is correct.

43 It is correct that the letter refers to the termination of the agreement because no solution could be found on the issues raised by the parties.

44 The witness, however, volunteers to state that “there were several meetings and discussions between parties thereafter.”

45 It is true that the Plaintiffs did not receive any letter from the Defendants withdrawing the Defendants' letter dated 29.01.2003. However, orally they stated that they will not act upon the termination notice.

46 It is true that the Plaintiffs have not paid the arrears of maintenance charges as demanded by the Defendants till the date of filing of the suit.

(Shown paragraphs 24 and 25 of the Affidavit of evidence of the Plaintiffs, dt.25.10.2010)

Read over and explained to me in Hindi and found correct.

(Bharat S. Shah)

**PC:**

47            The cross-examination is incomplete as the Court time is over.

By consent, stand over to 24<sup>th</sup> January, 2012 at 3:00 pm..

**(S.C. Dharmadhikari, J)**