

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

Mr. H. J. Thakkar, Senior Advocate a/w Vibhav Krishna i/b Juris Consillis
for the plaintiff.

Mr. Iqbal Chhagla, Senior Advocate a/w Mr. Naval Agarwal, Mr. Neville
Lashkari, Ms. Dimple Shah, Ms. Yugandhara Khanwilkar, Mr. Tejas Joshi
i/b M/s. Mulla & Mulla & Craigie Blunt & Caroe for the defendants.

CORAM: S.C.DHARMADHIKARI, J.

DATED: 24/1/2012

P.C.

With the consent of both sides, the following corrections are made in
the Notes of Evidence:

In para 25 instead of the word “22 Purchasers” the words “20
purchasers” shall be substituted.

In para 35 the word “a” would be added before the word “threat” of

the defendants.

In Para 39, the words “to a complaint” shall stand deleted.

No other corrections in the notes of evidence are necessary.

CROSS-EXAMINATION OF THE PLAINTIFF RESUMED ON A
APPEARANCES:

Cross Examination of Mr. Bharat Shantilal Shah (Plaintiff No. 1),
Age: 68 years, Occupation : Business, resident of 5C, Swapnalok, Nepean
Sea Road, Mumbai 400 006; by Mr. I. M. Chagla, learned Senior Counsel
appearing on behalf of the Defendants, RESUMED:

48. It was necessary that the Notes of Evidence ought to have been explained to me in Hindi.

49. I have studied in K.C. College and my medium of instructions was “English ”.

50. Although my medium of instructions was “English”, I have difficulty in understanding “English language”.

(Shown plaint page 61. Shown Verification clause at page 61):-

51. I had no difficulty in understanding verification clause, although it is

in 'English'.

(Shown plaint page 62.)

52. I have no difficulty in understanding the verification clause at page 62 although it is in “English”.

53. I had no difficulty in understanding the entire plaint although it is in “English language”.

54. I had no difficulty in understanding the contents of the affidavits filed in support of the notice of motion for interim relief, the additional affidavit and the affidavit-in-rejoinder although each one of them is in “English language”.

55. I had no difficulty in understanding the contents of the affidavits that were filed in appeal before the Division Bench although each one of such affidavit was in 'English'.

(Shown the affidavits in lieu of examination-in-chief of the plaintiffs in this suit):

56. I have no difficulty in understanding my affidavits filed in lieu of examination-in-chief in this suit.

57. It was necessary to explain the Notes of Evidence to me in Hindi because my knowledge of English language is not so good and I am not in a position to speak English fluently, that is why I thought it necessary that the

answers are explained to me in 'Hindi'.

58. I have understood the answers that have been recorded by the court in answer to the questions posed to me in cross-examination.

(Shown Exh.-P-6, letter dated 19th December, 1997.):

59. It is correct that after certain legal opinion was obtained the parties decided to execute a lease and not a conveyance / sale deed of this immovable property.

60. It is not correct that prior to 2003, the parties were exchanging draft lease deed. The witness volunteers to state that “prior to 2002 they did not give any draft”.

(Shown Exh.-P-6 again):

61. I do not remember as to whether the draft of the lease deed was forwarded when the letter Exh.-P-6 was sent by the defendants.

(Shown Exh.-P-35, letter dated 21st January, 2003.):

62. It is correct that the parties were exchanging drafts of lease deed and not a sale or conveyance deed. However, it was always understood that the immovable property will be sold but despite such agreement the defendants went on forwarding drafts of lease deeds on the basis that there is a legal opinion which states that the property cannot be sold but must be given on lease. Several such drafts were forwarded but the agreement for sale and a

declaration had already been registered.

63. The declaration was registered on 16th March, 2005.

64. It is true that after the letter of termination was issued and received by the plaintiffs there were negotiations between the parties but they were regarding several issues including provision of maintenance and infrastructure etc.

65. It is not correct that there were any negotiations with regard to the terms and conditions of the agreement, after termination letter was received by the plaintiffs. In fact, the plaintiffs always maintained that the transaction should be of a sale but the defendants kept on forwarding various drafts of lease which were not accepted by the plaintiffs.

66. The plaintiffs were never agreeable to a lease of the immovable property in their favour.

(Shown Exh.-P-27A letter dated October 22, 2002.):

67. I was ready for execution of a lease of the immovable property in my favour provided such a lease deed was in writing and duly registered.

68. I will not be in a position to recollect as to why I was not willing to execute a lease deed in my favour in 1999 and why I agreed to do so in the year 2003 because the defendants would forward several drafts. The finalization of such draft could not take place earlier.

69. It is true that I had forwarded a draft of the lease deed as referred in this letter in 1999 and I was ready for a lease of the immovable property in my favour provided the defendants execute a document in writing in that behalf and have it duly registered.

(Shown Exh.P-28, Letter of termination).

70. By this letter the defendants terminated the agreements of lease in respect of the immovable property.

71. It is true that there was no separate agreement styled as 'agreement to lease' / 'lease agreement' between the parties in respect of the immovable property.

(Shown para 43 of the Notes of Evidence.):

72. The letter of termination terminates the agreement in relation to the immovable property.

(BHARAT S. SHAH)

73. The cross-examination is incomplete as the Court time is over. By consent, stand over to 30th January, 2012 at 3-00 p.m.

(S. C. DHARMADHIKARI, J.)