

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

SUIT NO. 3940 OF 2002

D. VASANTRAI AND CO. )...PLAINTIFF

V/s.

JAYANTILAL M. JAIN AND ANOTHER )...DEFENDANTS

WITH  
CONTEMPT PETITION NO.132 OF 2010

IN

SUIT NO.3940 OF 2002

WITH

COURT RECEIVER EXECUTION NO.3940 OF 2002

IN

SUIT NO.3940 OF 2002

Mr.Agnel Carneiro a/w. Ms.Gayatri Sathe i/b Mulla & Mulla and Cragie Blunt & Caroe, Advocate for the Plaintiff.

Mr.Satyavan N. Vaishnav a/w Ms.Nupur J. Mukherjee, Ms.Jasmine Sabharwal i/b M/s. N.N. Vaishnawa & Co., Advocate for the Defendants.

Mrs.S.S.Dukhande, Section Officer, Court Receiver's Office, present in Court.

CORAM : ABHAY AHUJA, J.

DATE : 1<sup>st</sup> JULY 2025

**PC. :**

1. Pursuant to earlier order of this Court, today when the matter is called out, Mr.Agnel Carneiro, learned Counsel, appears for the Plaintiff and submits that Plaintiff's witness is present and that this Court may proceed to mark the documents.

avk

1/10

2. Mr.Bachubhai Jayantilal Parekh, partner of Plaintiff, is present in Court and is administered oath by the learned Court Associate.

**PW-1**

Name : Bachubhai Jayantilal Parekh  
Occupation : Business  
Address : 801, Nivant, Bajaj Road, Vile Parle (W),  
Mumbai – 400 056.

**Examination-in-chief of Mr.Bachubhai Jayantilal Parekh - PW-1 ON S.A.**

(Witness is shown affidavit in lieu of oral evidence dated 15<sup>th</sup> April 2016 under Order XVIII, Rule 4 of the Code of Civil Procedure, 1908)

This is my affidavit. The contents of this affidavit are true and correct to my knowledge and belief. I have affirmed and verified this affidavit by signing at the foot of this affidavit. I identify my signature on this affidavit.

I am producing original compilation of documents comprising of 35 documents. I have deposed to the said documents in my affidavit in lieu of oral evidence.

The witness has deposed to the truth and contents of the said affidavit.

There are no questions in oral examination-in-chief.

(The affidavit in lieu of oral evidence dated 15<sup>th</sup> April 2016 is taken on record and marked as **Exhibit P-1/1.**)

3. This Court now proceeds to mark the documents.

4. The document at Serial no.1 is the original certificate of registration of the Plaintiff's firm issued by the Registrar of Firms. Mr.Vaishnav, learned Counsel, appearing for the Defendants while drawing attention to the Statement of Admission and Denial submits that since the document is the original certificate of registration, the same can be admitted and marked. Accordingly, the said document is marked as **Exhibit PW-1/2**.

5. The document at Serial no.3 is a copy of the judgment and order dated 13<sup>th</sup> June 1997 passed in Appeal No.252 of 1992 passed by Small Causes Court, Mumbai. The document is admitted and marked as **Exhibit PW-1/3**.

6. The document at Serial no.4 is original rent receipt dated 14<sup>th</sup> December 1978 issued by the Office of the Official Assignee, High Court, Bombay. The document is admitted and marked as **Exhibit PW-1/4**.

7. The document at Serial No.5 is original rent receipt dated 9<sup>th</sup> September 2015 issued by the Office of the Official Assignee, High Court, Bombay. The document is admitted and marked as **Exhibit PW-1/5**.

8. The document at Serial No.6 is original rent receipt dated 14<sup>th</sup> December 2015 issued by the Office of the Official Assignee, High Court, Bombay. The document is admitted and marked as **Exhibit PW-1/6**.

9. The document at Serial No.7 is original Agency Agreement dated 6<sup>th</sup> November 1998. The document is admitted and marked as **Exhibit PW-1/7**.

10. The document at Serial No.8 is photocopy of the cheque dated 15<sup>th</sup> December 2001 drawn on the Mumbai District Central Co-operative Bank Ltd. The document is admitted and marked as **Exhibit PW-1/8**.

11. The document at Serial No.9 is an acknowledged copy of the Income Tax Returns along with the Statement of Accounts for the

financial year 1<sup>st</sup> April 2001 to 31<sup>st</sup> March 2002. The document is admitted and marked as **Exhibit PW-1/9**.

12. The document at Serial No.10 is a certified copy of the Roznama dated 3<sup>rd</sup> December 2002 in Notice of Motion No.4681 of 2002 in S.C.Suit No.6353 of 2002 of Bombay City Civil Court. The document is admitted and marked as **Exhibit PW-1/10**.

13. The document at Serial No.23 is a copy of the order dated 20<sup>th</sup> December 2002 passed by the Hon'ble High Court. The document is admitted and marked as **Exhibit PW-1/11**.

14. The document at Serial No.24 is certified copy of the order dated 21<sup>st</sup> April 2006 passed by the Hon'ble High Court. The document is admitted and marked as **Exhibit PW-1/12**.

15. The document at Serial No.26 is original letter dated 23<sup>rd</sup> August 2010 received from the Assistant Police Commissioner and Public Information Officer (South Region) Mumbai along with detailed answer to the queries and said supporting documents as submitted by Mr.Deepak Ram Tyagi received under the Right to Information Act.

Mr.Vaishnav, learned Counsel for the Defendants submits that only the letter can be admitted and the annexures cannot be admitted and are denied as it neither shows any endorsement nor shows any authenticity. Accordingly only the letter dated 23<sup>rd</sup> August 2010 is marked as **Exhibit PW-1/13**.

16. The document at Serial No.27 is a copy of the Agreement dated 1<sup>st</sup> September 2002 executed between the Defendants no.1 and 2. Although the document has been denied, however, at the time of hearing, Mr.Vaishnav for the Defendants submits that the said document at Serial No.27 is admitted and be marked as an exhibit. Accordingly, the document is marked as **Exhibit PW-1/14**.

17. The document at Serial No.31 is original letter dated 27<sup>th</sup> August 2010 along with its enclosure received from Mahanagar Telephone Nigam Limited. The document is admitted and marked as **Exhibit PW-1/15**.

18. The document at Serial No.33 is original letter dated 9<sup>th</sup> July 2010 along with its six enclosures received from the Brihan Mumbai Electric Supply and Transport Undertaking. Mr.Vaishnav, learned

Counsel for the Defendants submits that only the letter can be admitted and the annexures cannot be admitted and are denied as they do not show any authenticity. Accordingly only the letter dated 9<sup>th</sup> July 2010 is marked as **Exhibit PW-1/16**.

19. The document at Serial No.35 is original letter dated 23<sup>rd</sup> December 2010 along with a copy of the Agency Agreement and Undertaking/Indemnity Bond executed by the Defendant no.1. The said document is admitted and marked as **Exhibit PW-1/17**.

20. With respect to the document at Serial No.2 of the compilation of documents of the Plaintiff which is stated to be the original sketch plan of the said shop, Mr. Vaishnav, learned Counsel for the Defendants submits that the said document is denied.

21. However, Mr. Agnel Carneiro, learned Counsel appearing for the Plaintiff draws the attention of this Court to paragraph 2 of the affidavit of PW-1 and submits that the PW-1 has stated that he has prepared the sketch plan showing the exact location of the shops No. 3 and 4 and it bears his signature. Mr. Carneiro submits that the same be marked as an exhibit.

22. When this Court has pointed out to Mr. Carneiro, learned Counsel for the Plaintiff that the sketch forming apart of the compilation of documents indicating two doors: one opening at J.S.S. Marg and other opening on the side of Princess Street is not the same as Exhibit A to the Plaint which contains reference to the door of the Suit premises opening only on the side of J.S.S. Marg, Mr. Carneiro submits that the Defendants in paragraph 9 of the written statement with respect to the paragraphs 1 and 2 of the Plaint have only denied that the Plaintiff is carrying on business only at the address given on the cause title and that the Defendants have also been carrying on business at the said premises.

23. Having heard the learned Counsel and having considered their submissions, this Court is of the view that since the PW-1 has stated on oath that he has prepared the sketch plan of the shop, the said document be marked as exhibit, subject to cross-examination on behalf of the Defendant. Accordingly, the said document at serial number 2 is marked as **Exhibit PW-1/18**, subject to cross-examination by the Defendants.

24. With respect to the document at serial number 11, which is certified copy of the Court Receiver's Report dated 4<sup>th</sup> December, 2002, the same has been denied on behalf of the Defendants. Mr. Vaishnav, learned Counsel appearing for the Defendants submits that the same cannot be permitted to be exhibited in the absence of cross-examination of the Court Commissioner. Mr. Vaishnav has referred to Order XXVI Rules 9, 10 and 18 of the Code of Civil Procedure, 1908 (CPC) and also to a decision of this Court in the case of ***Kishore H. Desai Vs. Lilawati Virji Chheda and Others***<sup>1</sup>.

25. Since it is 5.00 p.m. and there is matter for arrest of a vessel urgently demanding this Court's time, it would not be possible to continue hearing this matter.

26. The Plaintiff's witness (PW-1) is accordingly discharged for the day.

27. Learned Counsel appearing for the Plaintiff seeks permission for the PW-1 to remain present through video conferencing on the next date submitting that he is a super senior citizen with multiple ailments,

---

<sup>1</sup> 1993 Mh. L.J. 1155

Mr.Vaishnav for the Defendants has no objection if the permission is granted.

28. Let the Plaintiff's witness (PW-1) remain present on the next date through video conferencing.

29. List for further consideration on **6<sup>th</sup> August, 2025** under the caption "For Marking of Documents".

**(ABHAY AHUJA, J.)**