

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****SUITS NO. 2720 OF 2011**

Solar Readymades Pvt. Ltd.

And Solar Sportswear

...Plaintiff

Versus

Rajdeep Construction Pvt. Ltd.

...Defendant

....

Mr. Cinmay Mehta, a/w. Mr. Solomon Math, i/b. RVJ Associates, for Plaintiff.**Mr. Vikram Deshmukh**, a/w. Ms. Devyani Wanjara i/b. B. R. Oza & Co. for Defendant.

Mr. Ankur D. Savla, Director of Defendant No.1 present.

....

CORAM : SANDEEP V. MARNE, J.**DATED : 17 JANUARY 2024.****P.C. :**

The learned counsel appearing for parties would submit that the evidence of Plaintiff's witness is complete and the Court Commissioner has filed a report of examination of Plaintiff's witness.

2. Mr. Deshmukh, the learned counsel appearing for Defendant invites my attention to paragraph No.4 of the Order dated 30 February 2020 by which the Defendant No.1 was permitted to withdraw the affidavit of Mr. Ankur D. Sawala and to substitute the same with the fresh affidavit. Mr. Deshmukh would now submit that Defendant No.1 does not wish to

withdraw the earlier affidavit of evidence of Defendant No.1 sworn on 25 January 2019.

3. Mr. Ankur D. Sawala-Defendant No.1 is personally present before the Court and is administered oath.

Ankur D. Sawala
Rajadeep Constructions Pvt. Ltd.
'Sailesh', Plot No.94-A,
T.P.S.II Linking Road,
Santacruz (W), Mumbai 400 054.

On S. A.

4. The affidavit in lieu of examination-in-chief is now shown to me. It is affirmed by me. It bears my signature. The affidavit of evidence is marked as Exhibit **DW/1**.

5. Defendant has tendered compilation of 24 documents. The document at Sr. No.1 is the board resolution authorizing Defendant No.1 to lead evidence. Therefore the document at Sr. No.1 is marked as Exhibit **DW/2**. The documents at Sr. Nos.2, 9, 10 and 12 to 23 have been admitted by the Plaintiffs. In that view of the matter, the documents at Sr. Nos.2, 9, 10 and 12 to 23 are marked as Exhibits **DW/3 to DW/17**.

6. Considering averments made in the affidavit of evidence of Defendant No.1 in paragraph Nos.5 and 6 the documents at Sr. Nos.3 to 8 in the compilation of documents are marked as Exhibits **DW/18 to DW/22** subject to contents to be proved.

7. Considering the averments made in paragraph No.8 of the affidavit of evidence of Defendant No.1, the document at Sr. No. 11 of compilation of documents is marked at Exhibit **DW/23** subject to contents to be proved.

8. The document at Sr. No.24 is certificate under Section 65D of the Indian Evidence Act, 1972. The certificate is signed by Mr. Ankur D. Sawala who admits his signature thereon. Therefore the document at Sr. No.24 of the compilation of documents is marked as Exhibit DW/24.

9. With the consent of the parties Mr. Maulik Tanna, Advocate practicing in this Court is appointed as Commissioner and is requested to cross-examine the witness of Defendant No.1.

(a) The Commissioner is at liberty to exercise discretion under Order XVIII rule 4(4) of the Code of Civil Procedure, 1908, to note the demeanour of the witnesses where necessary.

(b) All cross-examination shall be conducted strictly in question and answer form.

(c) The Commissioner will also be at liberty to direct that the whole or any part of the cross-examination should be video recorded for later reference of the Court. Should that be done, the original audio visual recording will be submitted alongwith the Commissioner's Report to the Registry.

(d) Liberty to the parties as also to the Commissioner to apply in case of difficulty.

- (e) All re-examination will be conducted only in Court.
- (f) Costs of the commission shall be borne equally by the parties.
- (g) Parties shall also pay costs of Rs.500/- per hearing to the Court Clerk who attends the Commission with Court Papers. This is required since these clerks attend the commission in addition to their duties and outside their normal working hours.
- (h) The Commissioner is not to permit any application for adjournment on dates previously fixed, except where absolutely unavoidable. Counsel's inconvenience or unavailability does not constitute such unavailability.

10. List the Suit on 15 March 2024 for status report of progress of recording of evidence of **DW/1** by the Commissioner.

SANDEEP V. MARNE, J.

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VISHNU
KAMBLE

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by KISHOR
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