

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

SUIT NO.2720 OF 2011

Solar Readymades Pvt.Ltd. & Anr. ...Plaintiffs.
Vs.
Rajdeep Construction Pvt.Ltd. & Anr. ...Defendants.

Mr.P.S.Gidwani, for Plaintiffs.

Mr.M.L.Palan with Devyani Wanjara i/b. Mr.B.R.Oza & Co., for Defendant no.1.

Mr.Phiroze Colabawalla with Ms.Anamika i/b. IndusLaw Associates, for Defendant no.2.

CORAM : G.S. KULKARNI, J.

DATE : 13 February 2020

P.C.:-

1. Today Mr.Deven Ashok Mukhi has deposed before the Court to lead evidence in terms of his affidavit in lieu of examination in chief. Now he would be required to be cross-examined by the defendants. However, before such evidence is recorded the documents of the plaintiffs are required to be marked in evidence.

2. A statement of admission and denial of the documents of plaintiffs is placed on record on behalf of defendant no.1. I have heard the learned counsel for the parties. The documents as relied on behalf of the plaintiff and admitted by the defendants are marked in evidence as under:

(i) The document at Sr.no.2 is the original letter of Intent dated 19 October 2010 is at page nos.3 and 4. Defendant no.1 has admitted the said document. It is marked in evidence at **Exhibit "P-1"**.

(ii) The document at Sr.no.3 is the original certified copy of Statement of Jankalyan Co-operative Bank Ltd. with respect to Plaintiff no.1 proving the payment which is at page no.5. Defendant

no.1 has admitted the said document. It is marked in evidence at **Exhibit "P-2"**.

(iii) The document at Sr.no.4 is the print out of e-mail dated 11 April 2011 of Mr.Ankur Savla, Director of Defendant no.1 to the Plaintiffs alongwith draft of Leave and Licence Agreement and draft comfort letter which is at page nos.6 and 9. Defendant no.1 has admitted the said document. It is marked in evidence at **Exhibit "P-3"**.

(iv) The document at Sr.no.5 is the copy of NOC dated 19 February 2011 issued by Honolulu Premises Co-operative Society Ltd. to the Defendants which is at page nos.20 and 21. Defendant no.1 has admitted the said document. It is marked in evidence at **Exhibit "P-4"**.

(v) The document at Sr.no.6 is the print out of e-mail dated 17 March 2011 of Mr.Ankur Savla, Director of Defendant no.1 to Plaintiff no.1 along with scanned copy of NOC and draft request letter to the Society which is at page nos.22 to 25. Defendant no.1 has admitted the said document. It is marked in evidence at **Exhibit "P-5"**.

(vi) The document at Sr.no.7 is the print out of e-mail dated 21 April 2011 of Mr.Ankur Savla, of Defendant no.1 to Mr.Devan Mukhi of Plaintiff no.2 along with corrected copy of the NOC from Society which is at page nos.26 to 28. Defendant no.1 has admitted the said document. It is marked in evidence at **Exhibit "P-6"**.

(vii) The document at Sr.no.8 is the print out of e-mail dated 22 April 2011 of Mr.Ankur Savla of Defendant no.1 to the Plaintiffs attaching therewith draft leave and licence agreement which is at page nos.29 to 39. Defendant no.1 has admitted the said document. It is marked in evidence at **Exhibit "P-7"**.

(viii) The document at Sr.no.9 is the print out of e-mail dated 30 April 2011 of Mr.Ankur Savla, the Director of Defendant no.1 from the Plaintiffs confirming the Leave and Licence agreement which is at

page no.40. Defendant no.1 has admitted the said document. It is marked in evidence at **Exhibit "P-8"**

(ix) The document at Sr.no.10 is the print out of e-mail dated 2 May 2011 from the plaintiffs to Defendant no.1 stating that the Plaintiffs have confirmed both the Agreements which is at page nos.41 and 42. Defendant no.1 has admitted the said document. It is marked in evidence at **Exhibit "P-9"**.

(x) The document at Sr.no.11 is the print out of e-mail dated 2 May 2011 by the plaintiffs to Defendant no.1 along with scanned copy of two cheques which is at page nos.43 and 44. Defendant no.1 has admitted the said document. It is marked in evidence at **Exhibit "P-10"**.

(xi) The document at Sr.no.12 is the print out of e-mail dated 3 May 2011 from Mr.Ankur Savla. Director of Defendant no.1 to the Plaintiffs suggested some minor changes to the Leave and Licence Agreement and Amenities Agreement which is at page nos.45 to 68. Defendant no.1 has admitted the said document. It is marked in evidence at **Exhibit "P-11"**.

(xii) The document at Sr.no.14 is a letter from Janakalyan Sahakari Bank Ltd., Khar Branch dated 4 May 2011 which is at page no.70. Defendant no.1 has denied the said document. However, it is marked in evidence at **Exhibit "P-12"** subject to the contents being proved in evidence.

(xiii) The document at Sr.no.16 is a letter from Janakalyan Sahakari Bank Ltd., Khar Branch dated 5 May 2011 which is at page no.72. Defendant no.1 has denied the said document. However, it is marked in evidence at **Exhibit "P-13"** subject to the contents being proved in evidence.

(xiv) The document at Sr.no.18 is the office copy of letter dated 27 May 2011 sent by Registered POST A/D, alongwith original postal

acknowledgment which is at page no.74 to 76. Defendant no.1 has admitted the said document subject to contents being proved. Hence, it is marked in evidence at **Exhibit "P-14"** subject to the contents being proved in evidence.

(xv) The document at Sr.no.19 is a final copy of Leave and License Agreement and amenities Agreement to be executed between Plaintiff no.2 and Defendant no.1 which is at page no.77 to 94. Defendant no.1 has admitted the said document subject to contents being proved. It is marked in evidence at **Exhibit "P-15"** subject to the contents being proved in evidence.

(xvi) The document at Sr.no.20 is a certified true copy of letter of intent dated 24 February 2011 executed between plaintiff no.2 on GKB Lens Pvt.Ltd. which is at page no.95 to 97. Defendant no.1 has denied the said document. However, it is marked in evidence at **Exhibit "P-16"** subject to the contents being proved in evidence.

(xvii) The document at Sr.no.21 are copies of Leave and License Agreement and Amenities Agreement executed between Defendant no.1 and Defendant no.2 dated 31 May 2011 which are at page nos.98 to 121. Defendant no.1 has admitted the said documents. It is marked in evidence at **Exhibit "P-17"**.

(xviii) The document at Sr.no.22 is the original letter of GKB Lens Pvt. Ltd. addressed to the plaintiff no.2 cancelling the said letter of intent dated 24 February 2011 which is at page no.122. Defendant no.1 has denied the said document. However, it is marked in evidence at **Exhibit "P-18"** subject to the contents being proved in evidence.

(xix) The document at Sr.no.23 is a certified copy of the Bank Statement of Jankalyan Sahakari Bank Ltd., showing the two cheques of Rs.11,00,000/- each have been debited to the account of Plaintiff no.2, which is at page nos.123 to 130. Defendant no.1 has denied the

said document. However, the document is marked in evidence at **Exhibit "P-19"** subject to the contents being proved in evidence.

3. The documents as relied on behalf of the plaintiff and denied by the defendant no.1 are marked as Articles in the evidence as under:

(i) The document at Sr.no.1 is a copy of the Extract of Registration of Plaintiff No.2-firm: The document has been denied by defendant no.1. It is marked as **Article 1**.

(ii) The document at Sr.no.13 is the photocopy of Pay Order bearing No.152518 dated 04/05/2011 for Rs.1000/- favouring joint Sub-Registrar Andheri I MSD which is at page no.69. Defendant no.1 has denied the said document. It is marked in evidence at **Article 2**.

(iii) The document at Sr.no.15 is the photocopy of Pay Order bearing No.KHR 17782 dated 5 May 2011 for Rs.50,000/- in favour of Stock Holding Corporation of India Ltd. A/c. E-stamping Maharashtra towards stamp duty for the Leave and Licence Agreement. Defendant no.1 has denied the said document. It is marked in evidence at **Article 3**.

(iv) The document at Sr.no.17 is office copy of the letter dated 27 May 2011 written by the Plaintiff No.2 to Mr.Ankur Savla of the Defendant no.1 which is at page no.73. Defendant no.1 has denied the said document. It is marked in evidence at **Article no.4**.

4. Learned Counsel for defendant no.1 states that an affidavit dated 25 January 2019, of Mr.Ankur D.Savla on behalf of defendant no.1 in lieu of examination in chief was placed on record. However, his contention is that now on behalf of the plaintiffs affidavit in lieu of examination in chief is filed and the plaintiffs have led the evidence and now the witness would be required to be cross examined on behalf of the defendants. His submission is that it would be appropriate that he be permitted to withdraw his affidavit with liberty to file a fresh affidavit in lieu of examination in chief at appropriate time after recording of evidence on behalf of the plaintiffs is complete. Learned Counsel for the plaintiffs and defendant no.2 has also no objection for this course of action. Accordingly, defendant no.1 is permitted to withdraw the affidavit of Mr.Ankur D.Savla filed in lieu of examination in chief, as placed on record. Office to do the needful. Defendant no.1 is accordingly at liberty to file a fresh affidavit of defendant no.1 at appropriate time.

5. At this stage Mr.Colabawalla, learned Counsel for defendant no.2 prays for the similar request, as on behalf of defendant no.2 an affidavit in lieu of examination in chief dated 14 February 2019, of Mr.Saurabha Gupta was placed on record. Defendant no.2 is also permitted to withdraw the said affidavit with liberty to file a fresh affidavit in lieu of examination in chief at appropriate stage of the suit. Office to do the needful.

6. Suit now needs to be proceeded and the Commissioner would be required to be appointed to record evidence. Mrs.Naziya Z.Merchant, Advocate of this Court, is appointed as Commissioner to record evidence. Fees of the Commissioner be borne by the parties in equal proportion. Learned Commissioner to make an endeavour to

complete recording of evidence within a period of twelve weeks from today and place on record her report alongwith notes of evidence.

7. Stand over to 11 June 2020.

[G.S. KULKARNI, J.]