

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 634 OF 2005**

M/s The Prag Bosmi Synthetic Ltd

..Plaintiff

Versus

The New India Assurance Co Ltd

..Defendant

Mr.Ajay Panicker i/b Ajay Law Associates,
Advocates for the Plaintiff.

Mr.Rahul Narichania, Senior Advocate, *with Mr.N.*
D. Motiwalla & Co, Advocates for the Defendants.

Mr. K. Jayakanthan *is present.*

CORAM : B. P. COLABAWALLA, J
DATE : JUNE 8, 2023

P.C.

In the above matter, on 19th January, 2023 an order was passed by this Court whereby the Plaintiff was allowed to reopen its evidence and lead the evidence of Mr. K. Jayakanthan, Surveyor of Associated Surveyors as the Plaintiff's fifth witness. The Surveyor's report is already marked as ***Exhibit-P/19*** subject to proof of truth of contents of the said report. It is to prove this report that the evidence of Mr. K. Jayakanthan is sought to be led by the Plaintiff.

2 Mr. K. Jayakanthan (PW-5), Aged:-57 years, the sole Proprietor of M/s Associated Surveyors is present in Court and administered oath.

On S. A.

Name:Mr. K. Jayakanthan

Aged:57 years

Address:Flat No.B/66, NAA Colony,
Meenambakkam,
Chennai-600 027.

Further examination in chief of PW-5 by the advocate for the Plaintiff.

3 Affidavit in lieu of examination in chief dated 8th February, 2023 is now shown to me. It is affirmed by me. It bears my signature. The contents of the affidavit are true and correct.

4 The affidavit is therefore marked as ***Exhibit:P-5/1.***

5 Since this witness only seeks to prove the Survey Report which is already marked as Exhibit-P19, and no other document is relied upon by this witness, further examination in chief is complete.

6 With the consent of parties, the cross examination of PW-5 shall be conducted on commission.

7 The cross examination of PW-5, with the consent of parties, shall be conducted by Mrs. Suvarna Joshi who was already appointed as the Commissioner, to record the cross examination of PW-5.

8 The Commissioner is at liberty to exercise discretion under Order 18 Rule 4 (4) of the Code of Civil Procedure, 1908 to note the demeanour of the witness wherever necessary.

9 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 along with the Commissioner's Report to the Registry.

10 Costs of the commission shall be borne equally by the parties.

11 In the event the original Court papers are called for and the cross examination is conducted in the Court premises, then, the parties shall pay costs of Rs.500/- per hearing to the Court Clerk who attends the commission with the Court papers. This is required since these Clerks attend the commission in addition to their duties and outside their normal working hours.

12 The Commissioner is requested to complete the cross examination of PW-5 within a period of four weeks from today and thereafter file his report in this Court within a period of two weeks thereafter. The parties are directed to cooperate with the Commissioner and not ask for any adjournment except for any unavoidable circumstances.

13 Liberty to the parties, as also to the Commissioner, to apply in case of any difficulty.

14 Place the above matter on Board for directions on 20th July, 2023.

15 This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act

on production by fax or email of a digitally signed copy of this order.

[B. P. COLABAWALLA, J].