

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

COMMERCIAL SUMMARY SUIT NO. 113 OF 2019

SAFFRON DEVELOPERS PVT. LTD.)...PLAINTIFF

V/s.

PREMCHAND RESORTS AND APARTMENTS)
PVT. LTD. AND OTHERS)...DEFENDANTS

Mr.Yazad Udwardia a/w. Ms.Bijal Gandhi and Mr.Sanjay Maji i/by
D.M.Legal Associates, Advocate for the Plaintiff.

Mr.Vikramjit Garewal a/w. Mr.Sriraj Menon, Mr.Avesh Ganja,
Mr.Sandesh Panchal i/by Mr.Sriraj Menon, Advocate for the
Defendants.

CORAM : ABHAY AHUJA, J.

DATE : 21st AUGUST 2024

PC. :

1. Pursuant to order dated 24th July 2024, today when the matter is called out, Mr.Udwadia, learned Counsel, appears for the Plaintiff and submits that in respect of the certificate under the Bankers Book Evidence Act, 1891 and the statement at serial no.2 in the compilation of documents dated 5th July 2019, an additional affidavit dated 29th July 2024 by one Mr.Rahul Gupta has been filed, and that, therefore, the certificate as well as the affidavit be marked as exhibits.

2. Mr.Garewal, learned Counsel for the Defendants, has no objection if the said documents are marked as exhibits, subject to proof of truth of the contents of the said documents.

3. Accordingly, the document at serial no.2 of the compilation of documents dated 5th July 2019, which is a certified copy of the bank statement, is marked as **Exhibit P-17**, subject to proof of truth of the contents of the said document and the certificate under the Bankers Book Evidence Act, 1891, is marked as **Exhibit P-18** also subject to proof of truth of the contents of the said document.

4. The marking of documents having been completed, this Court now proceeds with the consent of the learned Counsel for the parties to appoint a Commissioner for recording of the cross-examination of the Plaintiff's witness no.1.

5. Accordingly, this Court appoints Mr.Shantanu Sharma as Commissioner to record the cross-examination of the Plaintiff's witness no.1. The contact details of Mr.Shantanu Sharma are as under :

Name : Mr.Shantanu Sharma
Address : 1101, Raheja Centre,
Free Press Marg,
Nariman Point,
Mumbai – 400 021
Mobile No : 9167293767
Email id : adv.shantanumsharma@gmail.com

6. The Commissioner to record the cross-examination of Plaintiff's witness no.1 in accordance with the following :

(a) The Commissioner is at liberty to exercise discretion under Order XVII 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) Cost 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 regular 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.

7. Let the parties co-operate with the learned Commissioner.

8. The learned Commissioner is requested to complete the recording of cross-examination of the Plaintiff's witness no.1 by 27th November 2024.

9. List on **27th November 2024**.

10. Parties, with the consent of each other and subject to the learned Commissioner's convenience, are at liberty to have the evidence recorded through video conferencing.

(ABHAY AHUJA, J.)