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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

MISC. PETITION NO.11 OF 2015

Mariner Pacific Limited	...Petitioner
V/s.	
Upendra Kulkarni	...Respondent

WITH

MISC. PETITION NO.12 OF 2015

Mariner Pacific Limited	...Petitioner
V/s.	
Sushil Kaushik	...Respondent

WITH

MISC. PETITION NO.13 OF 2015

Mariner Pacific Limited	...Petitioner
V/s.	
Fortress Financial Services Limited	...Respondent

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Mr. Aayush Singhvi i/b. Vaish Associates for the Petitioner.
Mr. Srihari Saranathan a/w Shahezad Kazi i/b. M/s. Majmudar &
Partners for the Respondent.

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CORAM : A. K. MENON, J.

DATE : 14TH JANUARY, 2016.

PC.:

These are the Petitions filed pursuant to the proceedings in
Misc. Petition Nos.13 and 15 of 2014 filed in this Court wherein orders
dated 20th December, 2014 came to be passed directing the respondents

therein to file an affidavit of evidence and documents. Thereafter vide order dated 23rd February, 2015 additional affidavits were allowed to be filed and a Commissioner was appointed for recording evidence. It is common ground that the evidence has not been yet recorded before the Commissioner but the appointment of Commissioner continues to be operative. The Commissioner has vide his letter dated 2nd March, 2015 informed the petitioner's advocates of his fees as well as other terms for recording of evidence including the fact that cancellation of dates of hearing fixed will not be possible without the written consent of the other parties. The petitioners counsel states that the terms were agreeable however for various reasons the recording of evidence has not progressed.

2] As far as Misc. Petition no.13 is concerned, the learned counsel for the petitioners states that a separate affidavit requires to be filed on behalf of the company Fortress Financial Services Ltd. However in Misc. Petition no.14 of 2014 this Court has already considered this request and vide order dated 20th December, 2014 it was clarified that in view of the orders passed in Misc. Petitions Nos.13 and 15 of 2014 no further orders are required to be passed in Misc. Petition no.13 of 2015. In the circumstances, no further orders are required in Misc. Petition no.13 of 2015 and the affidavits already filed by Mr. Kulkarni and Mr. Kaushik in the Petition nos. 13 and 15 of 2014 will be treated as affidavits on behalf

of the said Fortress Financial Services Limited.

3] In view of the fact that the appointment of Commissioner continues to be valid and that the fact that all the documents and the evidence filed pursuant to the aforesaid orders passed in Petition Nos.13 and 15 of 2014 are identical in the present case as well, I see no reason why these fresh petitions should entertained. I therefore pass the following order;

(i) The petitioners are at liberty to continue with the recording of the evidence before the Commissioner appointed in Petition nos.13 and 15 of 2014.

(ii) The Misc. Petitions are disposed of in the above terms.

(A. K. MENON, J.)