

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

SUIT NO.588 OF 1989

Mr. Rohinton Merchant

....Plaintiff

Vs.

Framroz Apartments Pvt. Ltd. & Ors.

....Defendants

**WITH
SUIT NO.656 OF 1989
WITH
SUIT NO.7 OF 2004**

Mr. Adhiraj Malhotra I/b. Dunmorr Sett for plaintiff in S/588/1989.
None for plaintiff in S/656/1989.

Ms. Soma Singh I/b. Mr. Deepak A. Lad for defendant nos.1 and 2 in all three suits.

Ms. Perna Gandhi I/b. M/s. Manilal Kher Ambalal and Co. for defendant no.4 in S/656/1989 and for plaintiff in S/7/2004.

CORAM : K.R.SHRIRAM, J.

DATE : 28th SEPTEMBER 2018

P.C.:

SUIT NO.656 OF 1989

1 On 23rd August 2018 the following order was passed :

1. None for plaintiff. Ms.Singh states the suit is getting settled and consent terms will be filed on the next date. It is made clear that if consent terms are not filed, parties will go on with the matter and plaintiffs do not remain present, suit may get dismissed for want of prosecution.

2 Even today there is nobody present for plaintiff. Therefore, suit dismissed for want of prosecution.

SUIT NO.588 OF 1989

At the outset, Ms. Singh states that within one week from today defendant nos.1 and 2 will file their list of witnesses and serve a copy

thereof upon plaintiff. Statement accepted.

Name : Ashok Hotchand Advani (DW-1)

Age : 73 years

Occupation : Business

Address : 21, Framroze Court, 205 Netaji Subhash Road,
Marine Drive, Mumbai 400 021

on S.A.

Examination-in-chief by Ms. Soma Singh for defendant nos.1 and 2.

I say that I have filed two affidavits in lieu of examination in chief one affirmed on 13th October 2016 and the other (further affidavit) affirmed on 6th September 2018. I identify my signature in both the affidavits.

P.C.: The affidavits are taken on record and marked **Exhibit D-1/1** and **Exhibit D-1/1A**, respectively. With these affidavits, defendant nos.1 and 2 have also filed a compilation of 19 documents and the serial numbers given below relate to the index to the compilation of documents :

<i>Sr. No.</i>	<i>Exhibit number</i>
(1)	<u>Exhibit D-1/2</u>
(2)	This document is received in evidence and marked <u>Exhibit D-1/3</u> except the circled portion in page 7
(3)	<u>Exhibit D-1/4</u> only to the extent that this photocopy was received by the witness from his advocates Ambubhai and Diwanji and subject to proof of truth of its contents.
(4)	Y-1 for identification

(5)	Y-2 for identification
(6)	Y-3 for identification
(7) & (8)	<u>Exhibit D-1/5</u> and <u>Exhibit D-1/6</u> , respectively
(9)	<u>Exhibit D-1/7</u>
(10)	<u>Exhibit D-1/8</u>
(11)	<u>Exhibit D-1/9</u>
(12)	<u>Exhibit D-1/10</u> subject to proof of truth of its contents
(13)	<u>Exhibit D-1/11</u> subject to proof of truth of its contents
(14)	<u>Exhibit D-1/12</u> subject to proof of truth of its contents
(15)	Y-4 for identification
(16)	Y-5 for identification
(17)	<u>Exhibit D-1/13</u> subject to producing certified copy of this order. Ms. Singh states that the application for certified copy will be made by 3 rd October 2018. Statement accepted.
(18)	Y-6 for identification
(19)	<u>Exhibit D-1/14</u>

The Commissioner appointed earlier to continue recording of evidence on the same terms and conditions. The fees, administrative expenses of the Commissioner together with typing charges and venue charges, if any, to be shared equally between plaintiff and defendant nos.1 and 2 and the same together with costs already incurred on the commission shall be costs in the suit.

The Commissioner to endeavor to complete recording of evidence of DW-1 by 30th November 2018. The Commissioner to fix minimum two/three dates per session for cross examination of DW-1. If the parties do not respond promptly within 48 hours of receiving a

communication from the Commissioner suggesting the subsequent dates, the Commissioner to go ahead and fix the dates convenient to the Commissioner and the parties shall make themselves available at the time and dates fixed by the Commissioner. If defendant nos.1 and 2 or witness does not remain present, the Commissioner should close the evidence of DW-1 as not made available for cross and if plaintiff does not remain present to cross examine the witness, plaintiff's cross examination should be treated closed as no cross. Once the dates are fixed, the Commissioner not to grant adjournment on any ground whatsoever. The Commissioner to identify the documents and mark them in sequence as provided in this order and to record cross examination of the witness.

SUIT NO.7 OF 2004

Suit to be listed for directions alongwith suit no.588 of 1989 on
7th December 2018.

(K.R. SHRIRAM, J.)

Gauri
Amit
Gaekwad

Digitally signed
by Gauri Amit
Gaekwad
Date: 2018.10.01
18:08:33 +0530