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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 567 OF 2018
IN
SUIT NO. 3506 OF 1990**

G Ram Construction Company	...Plaintiff
<i>Versus</i>	
Chowgule & Company (India) Pvt Ltd	...Defendant

**Mr TN Subramaniam, Senior Advocate, with Mr Kapil Moye, Mr
Paresh Shah, Leena Mirasi & Tanmayee Salekar, i/b Shah &
Sanghavi, for the Plaintiff.**

**Mr Uday Bobade, with Jitendra Ramugade, i/b Mukesh
Subramaniam, for the Defendant.**

**CORAM: G.S. PATEL, J
DATED: 13th April 2018**

PC:-

1. The Motion is by the Defendant. It seeks to reopen its case to enable it have marked in evidence documents that have so far received only an identification marking as “Y2” to “Y8”.

2. On 29th October 2007, a good eleven years ago, parties agreed before AM Khanwilkar J (as he then was) that no further evidence would be adduced. The matter was then listed for final

arguments. It has been listed several times since but does not seem to have been taken up.

3. This in itself raises a difficulty. For, although evidence was closed, the documents on both sides that were tendered before the commissioner who took evidence were never marked. Actually, those documents ought to have been marked *before* the parties went to trial before the Commissioner, but that was not the practice in those days, at a time before the question of law was finally settled by a Full Bench in *Hemendra Rasiklal Ghia v Subodh Mody*,¹ and, later, the Division Bench in *Ayushakti Ayurved Pvt Ltd v Hindustan Unilever Ltd*.²

4. I took up those documents for marking only recently. This set of documents were not admitted into evidence.

5. Of these seven documents, the document marked “Y3” is the original of a letter dated 2nd September 2000 from M/s Kanga & Company to the Defendant enclosing copy of an order dated 26th October 1993 of a Division Bench of this Court in Writ Petition No.1636 of 1993 filed by the present Plaintiff and another against the Union of India and another. I do not see why this document should be kept from evidence or demand further formal proof. Mr Subramaniam has no objection. It is taken on record and marked in evidence as **Exhibit “D38”**.

1 2008 (6) Bom CR 519.

2 2013 (1) Bom CR 599.

6. The other document marked “Y6” is a communication from the Board of Industrial and Financial Reconstruction forwarding to the Defendant a copy of its order. This document must also be taken in evidence and again Mr Subramaniam raises no objection. It is marked as **Exhibit “D39”** in evidence.

7. The remaining documents marked “Y2”, “Y4”, “Y5”, “Y7” and “Y8” are sought to be proved through officers of the Revenue and Forest Departments (“Y4”); the Collector of Thane (“Y2” and “Y5”); and Thane Municipal Corporation (“Y7” and “Y8”). Mr Bobade and his attorneys have written instructions to state, and their client is present in Court, that the necessary witness summons may be issued to these authorities only for production of the documents. This is noted and accepted.

8. I will dispose of the Notice of Motion by granting the reliefs sought in terms of prayer clauses (b), (c) and (d) but with the added direction that by next Wednesday, 18th April 2018, Mr Bobade will present the necessary letters of requests or summons that are to be issued and on which I will then make a formal order and set a returnable date.

9. The other direction that is necessary is in regard to the preservation of the originals. Both sides in their compilation have produced originals and these have been marked. The question is how best to preserve these and to ensure that they are not misplaced or destroyed between now and the final judgment in the Suit. Having regard to the fact that some of these documents are indeed

very old, I will request the Prothonotary and Senior Master to make arrangements to keep the compilations of originals in safe custody and to arrange to have these sent to Court whenever needed. This is an arrangement that I make for the present in this suit until a more practical protocol can be worked out on the administrative side.

(G. S. PATEL, J)