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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1889 OF 2017
IN
SUIT NO. 3463 OF 1987**

Encore Enterprises & Ors

...Applicants
(Orig Defendants
Nos. 6 to 8)

In the matter between
Sagar Construction Company
Versus

...Plaintiff

Manoharlal K Gupta HUF & Ors

...Defendants

**WITH
NOTICE OF MOTION NO. 1972 OF 2017
IN
SUIT NO. 3463 OF 1987**

Ms Alpana Ghone, with Ms Tanmayee Salekar, i/b M/s Shah & Sanghavi, for the Plaintiff.

Mr Yatin Shah, with Mr Niranjan M Deshpande, for Defendants Nos. 6 to 8 and Applicant in Notice of Motion No. 1889 of 2017.

Mr Dushyant S Pagare, i/b RD Misra, for Defendants Nos. 4(a), 4(b) & 4(c) & Applicant in Notice of Motion No. 1972 of 2017.

Ms Geeta Sonawane, Commissioner present.

CORAM: G.S. PATEL, J

DATED: 30th November 2018

PC:-

1. Pursuant to the directions of KR Shriram J issued on 21st August 2017, Ms Geeta Sonawane was appointed as a Commissioner. She adhered to the Court's directions in paragraph 4 with very great fidelity, the result of which was her being required to close the cross-examination of PW1.

2. The present Notice of Motion seeks a modification of that order, or, at any rate, liberty to continue the cross-examination before the learned Commissioner, who is personally present in Court. The Advocates for the contesting Defendants present today agree and undertake that they will not seek adjournments before the learned Commissioner. To avoid all controversy, I will fix a schedule. Ms Sonawane indicates several available dates in December 2018. However, Ms Ghone for the Plaintiff has some personal difficulties in that month. Parties agree that the Commission hearings will be held on 14th to 17th January 2019 and thereafter, if necessary, between 28th January 2019 and 1st February 2019.

3. By consent, Ms Geeta Sonawane's appointment as a Commissioners is continued. The directions or order closing the cross-examination of PW1 are recalled. Ms Sonawane is requested to record the cross-examination of PW1 on the schedule indicated above.

(a) The Commissioner is at liberty to exercise discretion under Order XVIII 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 along with 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) Costs 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 applications for adjournment on dates previously fixed, except where absolutely unavoidable. Counsel's inconvenience or unavailability does not constitute such unavoidability.

4. List the Suit for directions on 6th February 2019.

5. At the cost of repetition it is made clear that these dates and this schedule are not to be altered under any circumstances without leave of the Court.

(G. S. PATEL, J)