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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS (L) NO. 223 OF 2019**

IN

SUIT NO. 259 OF 2011

Chandrika C Shah

...Plaintiff

Versus

Orbit Finance Pvt Ltd & Ors

...Defendants

**Mr Ravindra Bhat, with Usha Rahi, Prakash Shinde & Chirag
Bhavsar, i/b MDP & Partners, for the Plaintiff.
Ms Chandana Salgaokar, for Defendants Nos. 2 & 3.**

**CORAM: G.S. PATEL, J
DATED: 12th March 2019**

PC:-

1. The Chamber Summons is by Defendants Nos. 2 and 3 represented by Ms Salgaokar seeking an order of redaction of portions of Evidence Affidavit dated 17th January 2019 filed on behalf of the sole Plaintiff through her constituted attorney, her husband.
2. I am leaving open for another day the question whether a constituted attorney can give evidence of matters that ought to be to the personal knowledge of a sole Plaintiff for another day.
3. Ms Salgaokar has submissions to make in regard to some of the documents and their admissibility. I will consider these at the

appropriate time when I take up the matter for marking the Plaintiff's documents. Those submissions will not result in a redaction of any part of the Affidavit from paragraphs 1 to 14.

4. Paragraph 15 is on a completely different footing. Here, for the first time, the Plaintiff puts up an affirmative case of cheating. Briefly stated, the case now is thus: That the Plaintiff had an agreement for purchase of residential flat No. 401 in a building called Chaitanya Towers at Prabhadevi. The 1st Defendant, Developer — and so go the allegations in paragraph 15 — swapped the name of the building and changed it to Orbit Plaza. In short, there are not two buildings, one called Chaitanya Towers and the other called Orbit Plaza. There is only building. It used to be called Chaitanya Towers and is now called Orbit Plaza. The 1st Defendant sold Unit 401 in Orbit Plaza to Defendants Nos. 2 and 3. There is no such pleading of any such change of name or cheating by the Defendants in the plaint although the plaint was amended to implead Defendants Nos. 2 and 3 and to include a challenge to their agreement with Defendant No. 1 for purchase of Unit No. 401 in Orbit Plaza. I am not going into the merits of this controversy.

5. The short point here is that this kind of pleadings of cheating is one that is of a kind with the others covered by Order VI Rules 4 and 2 of the Code of Civil Procedure 1908. The pleading must be particularized and cannot be conjectured or surmised. Second, no amount of evidence can be led or allowed in support of a pleading that is not made. Every piece of evidence must be traceable to a foundation of the pleading.

6. This being the case, paragraph 15 of the Evidence Affidavit will stand redacted. In the Chamber Summons that is before me a copy of the Affidavit is annexed from page 9 onwards and I have marked the relevant portion in red square bracket. The Associate will make the corresponding markings in the original Evidence Affidavit.

7. Paragraphs 16 to 21 cannot constitute evidence at all. These are all in the nature of submissions and arguments. They are best preserved for the final hearing of the suit. They will also be ignored during the trial. The relevant portions will be marked by the Associate from paragraphs 165 to 21 in the original Evidence Affidavit.

8. It will not be open to the Plaintiff to contend that there is no cross-examination on paragraphs 15 to 21 and the Defendants will be at liberty to ignore these paragraphs without risk of adverse consequence.

9. The Chamber Summons is disposed of in these terms. There will be no order as to costs.

10. List the Suit for marking the Plaintiff's documents on 15th March 2019.

(G. S. PATEL, J)