

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**COMMERCIAL NOTICE OF MOTION NO.1388 OF 2019
IN
COMMERCIAL SUIT NO.724 OF 2018**

Amjad Laiq ShaikhPlaintiff

Vs.

Sky Build Pvt. Ltd. and Ors.Defendants

Mr. Karl Tamboly a/w. Ms. Nikita Bhansali and Ms. Kahmish Khan i/b. Yasmin Bhansali and Company for plaintiff.

Mr. Audhoot Prabhu i/b. Naik Naik and Company for defendant no.1.

Mr. Ankit Lohia a/w. Mr. Swapnil Ambre i/b. Dinesh Tiwari and Associates for defendant no.3/applicant.

CORAM : K.R.SHRIRAM, J.

DATE : 11th JUNE 2019

P.C.:

1 This notice of motion is taken out for the reliefs as prayed for. Mr. Lohia states that he is not pressing for any of the reliefs in the notice of motion but defendant no.3 should be permitted to cross examine plaintiff's witness.

2 Though this Court had granted leave to defendant no.3 to cross examine plaintiff's witness, as defendant no.3 did not remain present either by himself or through the counsel on the date fixed by the Commissioner to cross examine plaintiff's witness, as per the directions passed by this Court in its order dated 27th March 2019, the Commissioner closed the evidence of PW-1 by noting no cross by defendant no.3.

3 Mr. Lohia states that there was a genuine mistake on the part of defendant no.3 due to which they were absent on the date fixed and submits that grave prejudice will be caused to defendant no.3 whose right to file written statement has already been noted as forfeited.

4 Mr. Tamboly strongly opposes and also submits that costs have been incurred for the hearing and it is easy for defendant no.3 to state that there was a genuine mistake for not remaining present. Mr. Tamboly also states that nothing of this is found in the affidavit in support.

5 Having heard the counsel, in the interest of justice and by way of indulgence, I am inclined to permit defendant no.3 to cross examine plaintiff's witness. Mr. Lohia's undertaking that defendant no.3/his attorney/counsel will remain present on any date and time fixed by the Commissioner for recording evidence is accepted.

6 Therefore, the noting of the Commissioner – no cross by defendant no.3 is struck off. Defendant no.3 is permitted to cross examine PW-1.

7 Defendant no.3, however, has to be put to terms. Defendant no.3 shall pay a sum of Rs.25,000/- as costs to plaintiff by way of cheque drawn in favour of advocate on record for plaintiff. For the hearing on the missed date, the Commissioner shall not send an invoice to defendant no.3

because that cost has been factored in the cost of Rs.25,000/- already. Defendant no.3 shall also give a donation of Rs.25,000/- to The Bombay Society for the Prevention of Cruelty to Animals. Both these amounts shall be paid within two weeks from today. The account details are as under :

Beneficiary Name : BSPCA INCL. BSDPHA
Beneficiary Account Number : 0064002100030631
Account Type : Current
Beneficiary Bank Name : Punjab National Bank
IFSC Code : PUNB0006400
MICR Code : 400024021

8 Notice of motion accordingly stands disposed.

9 Time to complete recording of evidence is extended upto and including 31st July 2019. The Commissioner to fix minimum two/three dates per session for cross examination of PW-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 plaintiff or the witness does not remain present, the Commissioner should close the evidence of PW-1 as not made available for cross and if defendants do not remain present to cross examine the witness, defendants' cross examination should be treated closed as no cross. Once the

dates are fixed, the Commissioner not to grant adjournment on any ground whatsoever.

(K.R. SHRIRAM, J.)