

IN THE COURT OF SMALL CAUSES, AT MUMBAI

ORDER BELOW EXH.1

IN

R.A.E. SUIT NO. 2000 OF 2014

The Cricket Club of India Ltd.	Plaintiffs.
<i>Versus</i>	
Indian Bank's Association	Defendants.

Coram	:	R. S. Salgaonkar Judge, C.R.No.11 Date : 24/1/2020.
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ORAL ORDER :

1. This suit is for cross examination of the plaintiff by learned advocate for defendant. The suit is filed by landlord against tenant and the suit is pending for years.
2. Today, this Court has kept the entire session for this matter and learned advocate for the defendant, who is busy in his argument before another Court, is unable to conduct the cross examination.
3. This situation would occur many time in future, where, either party, advocate may be occupied somewhere, or if everyone would be ready, Court may be occupied in other matter, as there are at least 50 matters on daily board.
4. Recording evidence by Court Commissioner is the best situation to all these problems, which would ensure that the suit can be decided in a definite time frame.
5. Advocate Mr. Maulik Tanna is appointed as Court Commissioner for recording cross examination of all the witnesses in this suit as per Order 18 Rule 4 of the Code of Civil Procedure, 1908.

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6. The evidence be recorded in the Court premises as suitable to the convenience of the cause. If there is an objection to any particular question which cannot be adjourned. The Court Commissioner is permitted to take necessary order of this Court on the objection even though next date may not be fixed for the proceeding in the Court when the work of commission will be done. The Court Commissioner shall record the evidence in the nature of question and answer form and any objection to any question if raised, it be recorded. For recording the evidence, the Court Commissioner may take assistance of any typist and the typing charges be paid per page basis by the party who is supposed to pay the commission fee on the given date.

7. The commission fee is fixed as Rs.5,000/- for commission of every single day. (However, this fees should be charged for effective commission work). The typing charges are in addition to the commission fee. The commission fee be paid directly to the Commissioner or it may be paid in advance in the Court. This Court Commissioner is appointed for recording cross examination of all further witnesses.

8. This Court has given thought as to who should pay the commission fee. There are experiences were some advocates need more time for cross examination and some advocates finish of the cross examination within one session. Equal distribution of commission fee will in fact cause inequality in distribution of commission fees. Therefore, it is decided that the party conducting the cross examination shall be liable to pay the commission fees for that particular session including the typing charges. This will result into a situation where the defendant's side shall pay the commission

fee during cross examination of the plaintiff's witness and vice-versa. In any case, it is equal distribution of the commission fees.

9. The Commissioner shall do the commission work at least for two dates in a week and if any party is absent during the commission, the commission work shall be concluded there, unless the matter is adjourned by the Commissioner to next date. Each page of evidence shall be signed by the witness.

10. The cross examination recorded by the Commissioner shall be part of the proceeding and Commissioner shall have power to administer oath to the witness. For purpose of referring the document to the witness, the ministerial staff of the Court shall assist the Court Commissioner. However, in any case, the record and proceeding shall not be taken out of the Court building.

11. On completion of the commission, the Commissioner shall return original writ of commission and evidence recorded to the Court, certificate of payment of fees stating dues, if any.

12. Issue commission writ on payment of process fees.

[R.S.Salgaonkar]
Date : 24/1/2020. Judge, Court of Small Causes, Mumbai.
[Court Room No.11].