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**(2015) 07 BOM CK 0135**

**In the Bombay High Court**

**Case No :** Notice of Motion (L) No. 1747 of 2015 in Suit No. 2148 of 1992

The Official Liquidator of Sumeet Machines Ltd.

APPELLANT

Vs

Navdeep Builders and Others

RESPONDENT

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**Date of Decision :** 27-07-2015

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 13, Order 13 Rule 2, Order 13 Rule 2(1), Order 18 Rule 17, Order 18 Rule 17A  
Limitation Act, 1963 — Section 5

**Citation :** (2016) 1 ABR 764

**Hon'ble Judges :** R.S. Dalvi, J

**Bench :** Single Bench

**Advocate :** J.P. Sen, Senior Advocate and Rakesh Reddy i/b Mahimkar and Co., for the Appellant; A.G. Damle, Vaibhav Sugdare, Jayesh Ashar and Dhaval Patil instructed by K. Ashar and Co., Advocates for the Respondent

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## **Judgement**

R.S. Dalvi, J—The suit is filed for specific performance of an agreement between the parties dated 27.02.1987 and for other incidental reliefs under the said agreement. The original plaintiff had to pay the defendants Rs. 41 lacs, Rs. 69 lacs and Rs. 25 lacs aggregating Rs. 1.35 Cr. The original plaintiff has averred in para 5 of the plaint and the original plaintiff paid the defendants Rs. 41 lacs and Rs. 69 lacs which the defendants received and accepted as a part of the consideration payable under the agreement.

2. It is the original plaintiff's case that certain further amounts were payable to the defendants under the agreement in respect of construction on the suit plot of land. In para 11 of the plaint it is averred that the parties agreed that the plaintiff must make payment on behalf of the defendants to the defendants' contractor including the supplier of cement and materials and which payment would be treated as the payment made by the original plaintiff to the defendants in respect of the balance amount to be paid. The plaintiff paid Rs. 20.62 lacs to the suppliers/contractors and Rs. 4 lacs to the defendants. The defendants received and enjoyed the benefits of the payments. Only Rs. 37470.22 remained

payable at the time of the filing of the suit. The original plaintiff has averred the readiness and willingness to comply with its obligations under the agreement to sue for specific performance.

3. The receipt of the initial amount of Rs. 41 lacs forms a part of the agreement itself and is accordingly on record. Further receipts of the defendants or their contractors are not annexed to the plaint.

4. The defendants filed their written statement. The defendants have not specifically denied the receipt of consideration of Rs. 41 lacs or Rs. 69 lacs averred in para 5 of the plaint. In para 8 of the written statement the defendants did not admit that the original plaintiff paid those amounts as alleged by the original plaintiff and denied that the original plaintiff performed or was ready and willing to perform its obligation under the agreement between the parties. Similarly in para 14 of the written statement the defendants have not specifically denied the payment made by the original plaintiff to the contractor of the defendants on behalf of the defendants or to the defendants. In fact, the defendants have stated that it may be true that certain payments have been made by the original plaintiff to certain parties in connection with the supply of materials etc. The defendants have denied the modification of the agreement. The defendants have not admitted the correctness of the aggregate payment of Rs. 20.62 lacs as alleged by the original plaintiff in para 11 of the plaint and have denied the correctness of all the payments made by the original plaintiff. The defendants have not specifically denied the payments made to the defendants of Rs. 4 lacs as averred in para 11 of the plaint. The defendants have not admitted the correctness of the statement, Exhibit E to the plaint and have not admitted the aggregate payment of Rs. 13462529.78 as averred by the original plaintiff in the said para. They have however denied that only Rs. 37470.22 would be payable by the plaintiff to the defendants.

5. In substance, therefore, the defendants may be taken to have denied the receipts of all the aforesaid amounts from the original plaintiff. Nevertheless specific denials are wanting. Yet the non admission of the original plaintiff's statement is clear.

6. The original plaintiff came to be wound up. The Official Liquidator, High Court, Bombay was appointed liquidator in respect of the assets of the original plaintiff. He has been brought on record as the plaintiff. He has prosecuted the suit. The suit went to trial and one of the plaintiff's officers and one valuer came to be examined by the original plaintiff. The defendants have not examined any witness. The suit came up for arguments. It was noticed at that time that though the plaintiff had averred right from the inception in para 5 of the plaint about the payment of Rs. 41 lacs and Rs. 69 lacs and in para 11 of the plaint about the further payment of Rs. 24.62 lacs, the receipts of the defendants in that regard were not produced. The original plaintiff had not produced all the receipts at the time of the filing of the suit. The original plaintiff had not known that the defendants would deny the receipt of those amounts. After the defendants either

did not admit or denied the payments the original plaintiff would have done well to produce them in his affidavit of documents. The Court would certainly grant leave to the plaintiff to produce all such documents. In fact, it would be evidence of the original plaintiff's case which need not have been shown in the plaint. However the plaintiff has not relied upon and produced and proved those receipts even in the trial. The plaintiff would want to produce such documents at this stage under the above Notice of Motion. These are the documents marked Exhibit A colly to the affidavit-in-support of the Notice of Motion. They relate to the various payments and show how the payments were sought to be made and how they have receipted by the defendants or their contractors and agents. The plaintiff has applied for leave to produce those documents under Order 7 rule 14(3) of the CPC. Those documents, if allowed to be produced, would require them to be proved. Hence the original plaintiff has sought leave to recall its witness to lead further oral evidence to prove those documents under the provisions of Order 18 Rule 17 of the CPC. In fact, the original plaintiff may require to lead evidence of more than one witness to prove these documents.

7. The defendants claim that such leave should not be granted and no further witness can be recalled because it is an extremely late stage that this application is made which the plaintiff in law disentitled to produce.

8. Consequently the purpose and import of the aforesaid provisions would be required to be seen. Order 7 Rule 14(3) runs thus:

"14. Production of document on which plaintiff sues or relies.--(1) .....

(2) .....

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) ....."

9. First prayer in the Notice of Motion is for production of documents. This application is under Order 7 Rule 14(3) of the CPC. The Court can, grant leave, to the plaintiff to produce the documents at the stage later than the filing of the plaint. That would be in the discretion of the Court. The discretion would have to be used judiciously. It would be used to cause ultimate justice to be done by the production of the documents which would bring the truth on record.

10. The suit has been filed since 1992 upon the agreement dated 27.02.1987. The original plaintiff came to be wound up in 2005. The Official Liquidator came to be appointed in the Company Petition winding up the original plaintiff on 16.06.2005. The Official Liquidator was brought on record of this suit only on 19.11.2012 and an amendment in that behalf was carried out on 01.12.2012. On 18.12.2012 itself the list of Official Liquidator's documents came to be filed. On 21.09.2013 the affidavit of evidence on behalf of the plaintiff came to be filed. It

is under these circumstances that a large chunk of the documents remained to be exhibited as it appears that the Official Liquidator did not grasp the entire dispute. Must a party suffer such a lapse when, albeit later, original documents have been traced and are sought to be produced? It must be borne in mind that if the original plaintiff's suit is decreed on merits, the order would enure for the benefits of all the creditors of the original plaintiff. The application on behalf of the Official Liquidator is, therefore, not for the personal aggrandizement of the original plaintiff.

11. The analogy under Order 13 Rule 2(1) of the CPC would be a good guide. The rule runs thus :

"2. Effect of non-production of documents.--(1) No documentary evidence in the possession or power of any party which should have been but has not been, produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing."

The production of original documents under Order 13 upon amendment has done away with the aforesaid Rule 2. Hence the bar to production does not apply. Even when it was applicable good cause was the reason to allow the production of original documents at a subsequent stage of the proceeding which is after the settlement of issues. Even the initial mandate of production only if good cause was shown was only so that a suspicious document would not be produced as a matter of right at a subsequent stage. The explanation to satisfy the Court why they were not produced earlier had to be given but the sub-rule was always interpreted to be liberally construed so as to advance cause of justice if those documents were necessary for the proper decision of the case.

12. Hence in the case of Madan Gopal Kanodia Vs. Mamraj Maniram and Others, AIR 1976 SC 461 : (1977) 1 SCC 669 the Court considered the ambit of Order 13 Rule 2. The suit was between two wholesale businessmen. The Court considered the purchase by them of certain bales of cloth for which the price was not paid but, upon accounts, was to be taken to be adjusted. The plaintiff was called upon to file a statement in writing giving better particulars of his case under the provisions of Order 6 Rule 4 of the CPC. The plaintiff filed its written statement relying upon certain documents. Though the High Court rubbished the documents having been produced at a late stage, the Supreme Court in para 14 of the judgment appreciated the delay, if any, being condoned by the trial Court. The Supreme Court observed that those documents were produced, though not at the time of the filing of the plaint but along with statement of the better particulars, they were before the evidence had started and could not have taken the defendants by surprise. The Supreme Court observed that Order 13 Rule 2 did not provide any particular "ritualistic formula" in which the order of the Court had to be passed and hence upon good cause being shown held that the documents could be produced. The Supreme Court further observed that the

defendants would have an opportunity to rebut the documents to show that they were not genuine, if that be so. The Court, therefore, observed that the defendants suffered no prejudice by the production of those documents and hence they could be produced at a later stage. In fact, in that case, as in this, the defendants never even suggested that those documents were forged or fabricated.

In this case the facts reflected in the documents are averred in the plaint. They are only sought to be substantiated by the documentary evidence to prove those averments since the averments are not admitted. They are not sought to be produced to counter the case of the defendants in the written statement. They are not suspicious or stated to be fabricated.

13. The application to produce documents at a later stage in terms implies condonation of delay in producing them at the earlier stage. The parameters of Section 5 of the Limitation Act would justifiably apply. The cause to be shown for condoning the delay for filing an appeal after the period of limitation is over would be upon the same parameters. In the case of *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*, AIR 1972 SC 749 : (1972) 1 SCC 366 : (1972) 2 SCR 874(1) : (1972) 4 UJ 449 the Supreme Court considered the sufficient cause for excusing the delay to admit an appeal upon exercise of discretion of the Court thus:

"This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. .... the words "sufficient cause" receiving a liberal construction so as "to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant."

Of course, utter negligence or inaction or complete lack of bona fides would disentitle a party as much under Section 5 of the Limitation Act as in application under Order 7 Rule 14(3) of the CPC. Mr. Damle contended that there is gross negligence and inaction of not producing the documents along with the plaint by the original plaintiff. Of course, at that time the original plaintiff was not wound up and the Official Liquidator was not appointed. But at that time the plaintiff's basic documents were not expected not to be admitted either. It is only after the written statement is filed that the question of strict proof would come up. By that time of the trial the Official Liquidator had been brought a record and suffered from the lack of knowledge of all the facts.

14. The aforesaid case came to be followed in the case of *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, AIR 1987 SC 1353 : (1987) 13 ECC 27 : (1988) 19 ECR 565 : (1987) 28 ELT 185 : (1987) 167 ITR 471 : (1987) 1 JT 537 : (1987) 1 LLJ 500 : (1987) 1 SCALE 413 : (1987) 2 SCC 107 : (1987) 2 SCR 387 : (1987) 66 STC 228 : (1987) 2 UJ 29 in which also the parameters of liberal approach for condoning delay in an application under Section 5 of the Limitation Act have been set out more particularly with regard to

the cases of the Government. Whereas in the case of the State of West Bengal (supra) no preferential treatment was claimed by the Government or was observed could be granted to the Government, in this case it has been observed:

"experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause"."

The Official Liquidator's machinery is much the same and would suffer from the same ills.

In that case the delay came to be condoned upon the footing that:

"the approach of the Courts must be to do even-handed justice on merits in preference to the approach which scuttles a decision on merits."

Of course, the Court observed that the delay would be non deliberate as ordinarily a litigant did not stand to benefit by any delay. The Court observed:

"Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. ....

..... When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.....

..... There is no presumption that delay is occasioned deliberately; or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. ....

..... It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. ...."

15. This case came to be further followed in the case of State of Haryana Vs. Chandra Mani and others, (1996) 3 AD 1 : AIR 1996 SC 1623 : (1996) 2 CTC 109 : (1996) 64 ECR 15 : (2002) 143 ELT 249 : (1996) 3 JT 371 : (1996) 2 SCALE 820 : (1996) 3 SCC 132 : (1996) 1 SCR 1060 : (1996) 2 UJ 105 in which after setting out the above parameters of the functioning of the Government the principle of treatment required to be accorded to the State came to be extended thus:

"Therefore certain amount of latitude is not impermissible."

It is upon the reasoning that if the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest.

In this case also if the merits of the case demand a judgment to be passed in favour of the plaintiff, the creditors of the original plaintiff would be the beneficiaries of the opportunity given to the plaintiff to make out such case. If the merits of the case are not fully seen because no leave is granted as applied for, the reverse would be the fallout. If, however, even if the documents are allowed to be produced, are not proved or are otherwise not merited to grant any order to the plaintiff, the judgment on merits would do justice to the defendants as well.

16. The documents sought to be relied upon are private documents being letters of the original plaintiff with regard to the payment of the consideration under the agreement, the receipt of the defendants as also the contractors for the balance consideration paid and the amounts paid towards construction respectively, certain correspondence between the solicitors of the parties for a cheque of State Bank of India, a statement of account shown to be signed by the defendants (copy of which was produced earlier) etc. They would require to be proved by the direct oral evidence of the plaintiff or other witnesses. Consequently under prayer (b) of the Notice of Motion the plaintiff has sought leave to recall the plaintiff's first witness to give further evidence. That application is under Order 18 Rule 17 of the CPC. Order 18 Rule 17 runs thus:

"17. Court may recall and examine witness.--The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit."

17. It is contended on behalf of the defendants that an application under Order 18 Rule 17 can be allowed only to clear doubts which would arise in the mind of the Court upon an evidence given which the Court may do suo moto or upon an application of a party. It is contended that such evidence cannot be allowed to fill any lacunae in the evidence of the original plaintiff. Indeed that would be so. It would have to be seen whether to produce documents itself and seeking to lead oral evidence to prove such documents by the plaintiff who is the Official Liquidator, who has been brought on record pending the suit and who found all the affidavits in a state of disarray, would be filling up lacunae.

18. The evidence led on behalf of the plaintiff is extremely sketchy. The defendants have not led any evidence at all. Of course, that would be because only if the plaintiff makes out a case would the defendants be required to lead evidence to rebut the case. Not much has transpired in the evidence. The main contest for which the plaintiff seeks to discharge the onus lies only upon the plaintiff and would be considered only upon the production of the documents sought to be produced by the plaintiff.

19. This is a case in effect of allowing the plaintiff file a further affidavit before much evidence has at all been led. This is necessitated only because the original plaintiff came to be wound up pending the suit. The Official Liquidator came to be appointed. The officers of the original plaintiff would not be in seisin of the matter. It would be extremely difficult for the Official Liquidator to understand and produce all the necessary documents before the trial began specially in view of the fact that the payments of consideration after the payment of earnest amount receipted in the agreement itself were not specifically denied in the written statement of the defendants. There is a whole difference in approach of a private party in charge and control of the matter and a Court official taking charge who would not have full knowledge of the cause of action and whatever may have transpired in the dispute between the parties.

20. It is in this light that the jurisprudence by judge made law under Order 18 Rule 17 must be viewed.

21. In the case of Vadiraj Naggapa Vernekar (D) Through Lrs. Vs. Sharad Chand Prabhakar Gogate, AIR 2009 SC 1604 : (2009) 7 JT 202 : (2009) 4 SCALE 90 : (2009) 4 SCC 410 : (2009) 3 SCR 1071 it has been considered that an application of the kind is much like a review petition and would be guided by the parameters under Order 47 of the CPC. Consequently it is held that the witnesses cannot be recalled to fill up lacunae in the evidence. However it is also observed if the evidence on re-examination would have a bearing on the ultimate decision in the suit, the trial Court may permit recall of such witness for re-examination-in-chief with permission to the defendants to cross-examine the witness. In that case certain lapses in the oral evidence were noticed after the cross-examination of the witness. Despite accepting the discretion of the Court to recall a witness, the witness in that case was not ordered to be recalled merely because he was stated to have inadvertently left out certain vital facts which were necessary for the complete and proper adjudication of the suit. In that case only additional facts were sought to be stated. The deponent had full knowledge of those facts. Stating those facts would fill up the gaps in evidence. The Court held that the discretion had to be exercised with greatest care and only in exceptional circumstances for clarifying doubts and not for adding certain new facts which were not discovered subsequently but which were within the knowledge of the deponent. However the caveat of the Court was that if the re-examination had a bearing on the ultimate decision, the Court may exercise such a discretion.

This case is one where a chunk of the evidence has been simplicitor left out not because of negligence per se of the original plaintiff to prove the case. The Court must bear in mind the disarray of the papers after the company is wound up and is represented by a Court officer. This is not a case where the witness deposed about particular facts and then sought to depose further to fill up the lacunae in the earlier deposition. This is a case of part proof until the error came to be noticed when the suit reached the stage of arguments. There is no lacunae that has happened. There is only part evidence which is given. No holes in the

evidence are to be filled. Only the further evidence is to be allowed. Such evidence is not only oral evidence of patching up the earlier evidence. It is the concrete documentary evidence which can otherwise be allowed with leave of the Court to be produced.

22. The case of Vadiraj (supra) came to be followed in the case of K.K. Velusamy Vs. N. Palanisamy, (2011) 3 CTC 422 : (2011) 4 JT 38 : (2011) 2 RCR(Civil) 875 : (2011) 4 SCALE 61 : (2011) 11 SCC 275 : (2011) 4 SCR 31 which considered the inherent power of the Court under Section 151 for re-opening the evidence. In that case also part amount was paid under an agreement of sale as advance/earnest on the date of the agreement. The balance amount was payable later. The plaintiff alleged readiness and willingness and issued notice to the defendants calling upon him to execute the sale deed as he wanted to pay the balance amount which the defendants failed to comply leading to the suit for specific performance and alternatively for the refund. In that case the defendants filed an application for further cross-examination of the plaintiff's witness by recalling them. The defendants sought to produce a CD which recorded a conversation about admission of the plaintiff that the agreement was merely a security for repayment of the loan advanced by the plaintiff and not an agreement for sale of an immovable property. Despite the contention that the intention was only to delay the ultimate judgment in favour of the plaintiff and that there could be no doubt in the evidence recorded without the CD being produced, the Court allowed the further evidence to be led. It is held :

"Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo moto, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarifications, it may, of course, permit the parties to assist it by putting some questions."

Because there is no specific provision for re-opening the evidence, Section 151 was applied to meet the ends of justice though it was held that it cannot be routinely invoked. The parameters of invocation of Section 151 came to be summarized in the judgment. The summary for its invocation may be thus :

- "(a) to do what is "right" and undo what is "wrong",
- (b) if the ends of justice warrant it,
- (c) A Court has no power to do that which is prohibited by law,
- (d) if it is not in any way in conflict with the provisions of the Code,
- (e) would depend upon the discretion and wisdom of the Court and not a carte blanche to grant any relief,
- (f) the power has to be used with circumspection and care and when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court."

Hence it is held in para 11 of the judgment that under Order 18 Rule 17A of the Code the Court previously had the power to allow production of evidence by a party to a suit at a late stage upon its satisfaction that even after due diligence the evidence was not within his knowledge and could not be produced when he was leading his evidence. The Court observed the object of the deletion of Order 18 Rule 17A of the CPC by the amendment of 1999. The Court observed that since the trial of civil suits was streamlined, there would be little or no gap between the completion of the evidence and the conclusion of the arguments and the delay which might result in misuse to prolong the trial even after it was completed could not usually be resorted to. However the Court cautioned that the party may come across evidence which he could not lay his hands on earlier, which he may seek to produce later because the evidence has not concluded and there would still be time for the Court to consider further. Hence the Court held in para 13 of the judgment that even when the argument had commenced and are heard and the judgment is reserved in appropriate cases when interest of justice required the discretion of the Court "does not disappear merely because the arguments were heard fully or partly". Hence the Court concluded that non entertainment of any further evidence may be a sound rule but not a straightjacket formula and in a fit case the section as also the order can be invoked and could not be mechanically dismissed. Consequently the Court held in para 16 of the judgment that when the application was bona fide, when it would clarify the evidence on the issues, when it would assist in rendering justice, when non production was earlier for valid and sufficient reason, the discretion can be exercised. It can be granted on payment of costs to compensate the delay upon a fixed time schedule to be provided. It would, of course, not be granted if the evidence already led was clear and unambiguous or the application was made to protract the proceeding.

23. In this case the application is not lacking in bona fides. It is only made by a party who has come to Court to show the Court an error made under the circumstances in which he was after the company came to be liquidated and the management ceased to exist. It would only seek to prove further evidence and to subject the plaintiff's witness to further cross-examination upon a mere non admission of the defendants for a case otherwise dependent upon simple documentary evidence. It is a fit case for exercising the inherent powers of the Court for allowing the entire truth to prevail and, of course, upon whatever further defence that the defendant might show by way of cross-examination or any further evidence to be led by the defendants.

24. In the case of Bagai Construction Thr. Its Proprietor Mr. Lalit Bagai Vs. Gupta Building Material Store, (2013) 3 AD 235 : AIR 2013 SC 1849 : (2013) 116 CLT 489 : (2013) 3 JT 192 : (2013) 170 PLR 259 : (2013) 3 RCR(Civil) 304 : (2013) 2 SCALE 769 : (2013) 14 SCC 1 : (2013) AIRSCW 1564 which followed the aforesaid two cases once again the parameters have been similarly set out. The ultimate yardstick is a bona fide application showing the reason for earlier non production and the object of avoiding miscarriage of justice. In that case it was

sought to be made when the matter was posted for judgment. The plaintiff who was in charge of the trial sought to produce more of the basic documents being the bills to prove the plaintiff's claim. The plaintiff was seen to be in exclusive possession of those documents. The Court deemed it fit not to allow evidence which could have been easily produced initially upon the conclusion that it would fill up the lacunae in the plaintiff's own case. The Court in that case accepted the parameters set out in the case of K.K. Velusamy (supra) but on the facts of the case which were distinguishable did not accept the reason or cause for allowing the further evidence to be led and for recalling the witness.

This is the case of the Official Liquidator who must prosecute on behalf of the company an old action of a quarter of a century when he had not any knowledge of the facts as on the date of the suit or immediately thereafter. This is not a case when a lacunae could be filled up: there is no lacunae. This case cannot be equated with that case; there is only part evidence which has been recorded.

25. Thus seen as a whole the case of the plaintiff is half done. The realization has dawned later. Part of the case which was not even prosecuted is sought to be prosecuted after only short evidence has been led. The real trial would begin now if the plaintiff is allowed the application. The first allowance is a production of documentary evidence of the case which is not denied but only not admitted. It was referred in the plaint itself. The documentary evidence would require to be proved by direct oral evidence. If the documents are found admissible they would be marked. Further oral evidence would be considered. The plaintiff's witness would be cross-examined. The defendants would be allowed to lead evidence if desired. The plaintiff would compensate the defendants by costs. The costs shall be in the nature of payment for the commission and the fees of the commissioner for the full reasonable cross-examination. Hence the following order:

"(a) The Notice of Motion is allowed in terms of prayers (a) & (b).

(b) The plaintiff shall file the affidavit of evidence as also the affidavit of documents and also offer inspection of the original documents to the defendants within two weeks.

(c) The admissibility of the documents of the plaintiff shall be considered on the next date of hearing of the suit.

(d) The plaintiff shall be cross-examined upon the documents and the further affidavit of evidence.

(e) The plaintiff shall pay the costs of the commission and the fees of the commissioner for two sittings of cross-examination of the plaintiff's witness whose evidence is recorded as also 1 sitting each of the other witnesses who would require to prove some of the documents.

(f) The same Commissioner, who recorded the evidence led so far, shall record further cross-examination of the parties.

(g) The defendants shall be entitled to file its affidavit of evidence as also the affidavit of documents, if required, within two weeks of the cross-examination of the plaintiff's witnesses being completed.

(h) The Suit, therefore, stands adjourned to 05.08.2015 for considering the admissibility of the documents of the plaintiff."