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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 337 OF 2014

Khuzemabhai Syedna Taher Saifuddin Saheb alias
Khuzemabhai STS Qutbuddin alias Khuzamia
Qutbuddin

...Plaintiff

Versus

Mufaddal Burhanuddin Saifuddin

...Defendant

Mr. Ravi Kadam, Senior Advocate, *a/w Mr. Niranjan Bhatt, Chirag Mody, Anand Desai, Salil Thakore, Hemangi Abhyankar & Mushir Singh, i/b M/s. DSK Legal, for the Plaintiff.*

Mr. Iqbal Chagla, Senior Counsel, *with Mr. Janak Dwarkadas, Senior Counsel, Mr. Fredun E. Devitre, Senior Counsel, Mr. Pankaj Savant, Senior Counsel, Mr. Firdosh Pooniwalla, Mr. Juzer Shakir, Ms. Azmin Irani, Mr. Varghese Thomas, Mr. Abeezer Faizullahoy, Mr. Murtaza Kachwalla, Mr. Walter Lewis, and Mr. Shahan Pradhan, Aashdin Chivalwala & Sharvil P. Majmudar, i/b J. Sagar Associates, for the Defendant.*

CORAM: G.S. PATEL, J
DATED: 27th April 2015

PC:-

1. Mr. Kadam, learned Senior Counsel for the Plaintiff, has, this morning, tendered a supplemental affidavit in lieu of examination-in-chief of the Plaintiff, affirmed on 27th April 2015. Through this affidavit, the Plaintiff seeks to prove a number of

additional documents and photographs. On taking instructions, Mr. Chagla, learned Senior Counsel for the Defendant, does not oppose this affidavit being taken on file and the documents annexed to it being marked in evidence subject to his right to file a supplemental affidavit of documents on behalf of the Defendant, as also his right to cross-examine the Plaintiff on the veracity and authenticity of these documents and photographs.

2. In view of this, the affidavit dated 27th April 2015 is taken on file, subject to the foregoing qualifications. Annexures 2 to 14 of this affidavit are taken on record and marked in evidence as **Exhibit “P119”** to **Exhibit “P131”**, respectively.

3. Mr. Chagla has prepared a list divided into various categories of the documents required to be marked in evidence and which have so far not been marked. The list is taken on record and marked **“A” for identification**.

TABLE I

4. Table-I in this list has five documents, all objected to by the Defendant. The first of these is document No. 72 referred to at page 7 of the Plaintiff’s first affidavit of evidence dated 13th March 2015. This is a catalogue of various artefacts and their estimated valuation. The Plaintiff claims to be in possession of this catalogue and says he confirms its correctness. However, he is not the author of this document and has not himself prepared this valuation. This document is, therefore, marked **“X1” for identification**.

5. The next document in Table I is numbered 123 and referred to at page 19 of the Plaintiff's first evidence Affidavit. This is a translation into English by one Paul E. Walker of an extract from a book by Syedna Hamiduddin al-Kirmani. In his affidavit, the Plaintiff confirms the contents of the extract and its published translation. The document is taken on record and marked in evidence as **Exhibit "P132"**, subject to Mr. Chagla's right to cross-examine the Plaintiff on the testimony as also the document itself. The correctness of the translation and the original text are disputed. The Defendant will be at liberty to lead in evidence his own version.

6. The document at Serial No. 277 is the evidence of a third party in some previous proceedings. This is inadmissible in evidence and is not taken on record.

7. The next document is numbered 45 and referred to at pages 95-96 of the Plaintiff's first evidence affidavit. That document is addressed to the Plaintiff and this is a matter to which the Plaintiff specifically deposes. The document appears to have changed hands several times. It is also a document of more than 30 years' vintage. I am, therefore, inclined to receive it in evidence. It is taken on record and marked in evidence as **Exhibit "P133"**.

8. The next document is the one marked as "PW1-3" (not its exhibit number in evidence) and annexed to the witness's first evidence affidavit. This is the Plaintiff's list showing a purported 'hierarchy' of texts and sermons according to Dawoodi Bohra doctrines. The document is taken on record and marked in

evidence as **Exhibit "P134"**, subject to the proof of correctness of contents.

TABLE II

9. The documents in Table-II are admitted subject to the correctness of the contents of each. For convenience, the exhibit numbers are indicated in the copy of the tabulation annexed to this order.

TABLE III

10. The documents listed in Table-III are all manuscripts. Mr. Chagla is, I believe, correct in saying that in a matter such as this it would be inadvisable to insist on formal proof of such manuscripts. These documents in Table III are admitted in evidence without need for summoning the original authors of these manuscripts or their scribes. For convenience, the exhibit numbers are indicated in the copy of the tabulation annexed to this order. The same reasoning will undoubtedly apply to the documents produced by the Defendant.

TABLE IV

11. Table IV lists photographs and audio visual materials. Both sides have relied on rival photographs and audio-visual material. Mr. Chagla submits that these documents may be regarded as proved without formal evidence of the photographer or videographer in question or the sound recordists. Nonetheless all of

these will be subject to the proof of correctness. The documents in Table IV are admitted in evidence and marked in evidence. For convenience, the exhibit numbers are indicated in the copy of the tabulation annexed to this order.

12. Mr. Kadam, learned Senior Counsel for the Plaintiff, states that as regards more recent videos, audio recordings and photographs that may be relied on by the Defendant, the Plaintiff should be at liberty to insist on formal proof. This issue is left open and will be dealt with at an appropriate time. For the same reason, should the Plaintiff seek to rely also on any recent videos, these will be considered as and when the occasion arises. The two photographs and video referred to Tabulation-IV are not recent and they are, therefore, allowed in evidence.

TABLE V

13. The documents in Table V refer to re-publications of old texts and compilations of sermons by the al-Jamea-tus-Saifiyah. It is agreed that these re-publications of old texts and compilations of sermons may be admitted in evidence on both sides without formal proof. The documents in Table V are marked in evidence. For convenience, the exhibit numbers are indicated in the copy of the tabulation annexed to this order.

TABLE VI

14. The documents in Table VI will be produced and considered for being marked in evidence when these are called for by the

Advocates for the Plaintiff during the trial. They are presently not marked.

TABLE VII

15. The documents in Table VII are covered by paragraph 5 of my order dated 18th March 2015. These documents are taken on record and marked in evidence subject to the correctness of contents and other caveats noted in that paragraph. For convenience, the exhibit numbers are indicated in the copy of the tabulation annexed to this order.

TABLE VIII

16. The documents in Tabulation-VIII have already been marked in evidence.

TABLE IX

17. The documents in Tabulation-IX are, it is agreed, to be admitted. They are marked in evidence. For convenience, the exhibit numbers are indicated in the copy of the tabulation annexed to this order.

18. Three documents remain to be marked. These are the documents at Serial Nos. 270, 271 and 300. They are listed separately. That list is taken on record and marked **“A1” for identification**. These documents are taken on file and marked in

evidence as Exhibit “P222”, Exhibit “P223” and Exhibit “P224”.

19. The two lists “A” and “A1”, from which the documents are marked are appended to this order for completeness with the exhibit numbers referred to above marked on them.

20. Mr. Kadam tenders official translations of two Marathi documents and one Gujarati document in fulfilment of the undertaking given at the time of filing of the Suit. The Associate of this Court shall attach these documents at the relevant pages of the plaint.

21. I circulated a draft of this order for proof-reading and for checking the assigned Exhibit numbers. The list appended to this order is the one as finally corrected after this order was circulated; some duplicate entries have been removed from Mr. Chagla’s original list, and one incorrectly categorized entry has been moved to the correct table. To ensure that there is no controversy, the lists circulated to both sides and returned with their handwritten corrections are to be retained on record. This is in addition to the two lists as originally tendered in Court.

22. The Advocates for the Defendant returned a copy of the draft with minor changes. I have found these in order and have incorporated them in this order. The Advocates for the Plaintiff, however, returned the draft copy suggesting two ‘riders’ to paragraphs 10 and 13 of the body of this order. This is entirely irregular. I did not circulate a draft to allow parties to suggest

substantive changes to the order itself. The two 'riders' suggested by the Plaintiff were not at any time discussed in Court and I have not heard Mr. Chagla on either of those suggestions. Those two riders are, therefore, not incorporated in this order. At the next hearing, the Advocates for the Plaintiff may request a modification or clarification in those terms, after giving the Advocates for the Defendant sufficient notice of the modifications/clarifications sought.

(G. S. PATEL, J.)

List marked “A” for identification.

I) Documents objected to by the Defendant

Item/Serial No.	Document No.	Exhibit Nos.
6	72	“X1” for identification.
12	123	“P132”
56	277	not marked.
121	45	“P133”
11		“P134”

II) Documents which may be admitted subject to correctness of the truth of the contents

Item/Serial No.	Document No.	Exhibit Nos.
36	9	“P135”
38	290	“P136”
60	82	“P137”
73	93	“P138”
74	220	“P139”
75	228	“P140”
77	224	“P141”
79	174	“P142”
89	25	“P143”
91	27	“P144”
92	28	“P145”
102	18	“P146”
103	34	“P147”
104	259	“P148”
105	35	“P149”
106	36	“P150”
109	39	“P151”
111	79	“P152”
112	78	“P153”
113	176	“P154”
114	76	“P155”
115	77	“P156”

Item/Serial No.	Document No.	Exhibit Nos.
119	43	"P157"
158	3	"P158"
159	46 & 46A	"P159"
160	47	"P160"

III) Documents which are Manuscripts

Item/Serial No.	Document No.	Exhibit Nos.
48	112	"P161"
62	91	"P162"
150	287	"P163"
153	17	"P164"

IV) Photos and videos

Item/Serial No.	Document No.	Exhibit Nos.
83	175	"P165"
123	205 & 206	"P166" & "P167"
140	207	"P168"

V) Publications of the Jamea - Common ruling invited on all Jamea publication to be admitted on both sides:

Item/Serial No.	Document No.	Exhibit Nos.
135	129	"P169"
149	286	"P170"

VI) Documents which Defendant will produce as been called upon by DSK in their letter:

Item/Serial No.	Document No.	Exhibit Nos.
9		These documents are not marked.
65		
129		
Para 44 Page 110 AOE		

VII) Documents covered by para 5 of the Court order dated 18th March 2015 i.e original Arabic / LUD admitted, translation denied : these are all subjected to correctness of contents proved and subjects to other caveats in para 5 of the order

Item/Serial No.	Document No.	Exhibit Nos.
7	249	"P171"
10	10	"P172"
15	87	"P173"
17	89	"P174"
21	2	"P175"
23	8	"P176"
28	130	"P177"
29	201	"P178"
31	100	"P179"
34	64	"P180"
41	106	"P181"
42	107	"P182"
43	108	"P183"
46	96	"P184"
47	111	"P185"
52	115	"P186"
53	234	"P187"
54	283	"P188"
55	1	"P189"
58	285	"P190"
59	81	"P191"
64	83	"P192"
66	84	"P193"
67	295	"P194"
69	97	"P195"
70	280 & 280A	Audio - "P196"
72	232	"P197"
82	20	"P198"
93	29	"P199"
96	30	"P200"
101	261	"P201"

Item/Serial No.	Document No.	Exhibit Nos.
108	38	"P202"
118	204	"P203"
127	120 & 120A	Audio - "P204"
128	121	Audio - "P205"
136	133	"P206"
137	134 & 134A	Audio - "P207"
143	12	"P208"
144	13	"P209"
147	167	"P210"
148	157	"P211"
151	182	"P212"
155	244	"P213"
156	170	"P214"

VIII) Documents already admitted in the Admitted compilation of documents

Item/Serial No.	Document No.	Exhibit No.
8	279	"P108"
13	124	"P40"
14	229	"P85"
16	88	"P20"
18	90	"P21"
19	124	"P40"
20	229	"P85"
24	6	"P1"
25	241	"P93"
26	102	"P28"
27	101	"P27"
30	99 & 99A	"P25" & "P26"
32	238	"P90"
35	240	"P92"
37	104	"P30"
39	117	"P37"
40	105 & 105A	"P31" & "P32"
44	109	"P33"
45	110	"P34"

Item/Serial No.	Document No.	Exhibit No.
49	113	"P35"
50	114	"P36"
51	236	"P88"
57	281 & 281A	"P109" & "P110"
63	200	"P81"
71	284	"P111"
76	125	"P41"
78	230	"P86"
81	19	"P2"
84	21	"P3"
85	22	"P4"
86	24	"P6"
87	257	"P104"
88	23	"P5"
90	26	"P7"
94	258	"P105"
95	173	"P67"
97	31	"P8"
98	32	"P9"
99	33	"P10"
100	262	"P106"
110	40	"P11"
116	41	"P12"
117	42	"P13"
120	44	"P14"
122	203	"P82"
124	177	"P68"
125	231	"P87"
126	119	"P39"
130	126	"P42"
131	294	"P114"
132	127	"P43"
133	153 & 153A	"P59" & "P60"
138	269	"P107"
139	132	"P44"
141	135 to 148	"P45" to "P58"

Item/Serial No.	Document No.	Exhibit No.
142	219	"P83"
145	289	"P113"
146	299	"P115"
152	188	"P74"
152	161	"P62"
157	301 to 303	"P116" to "P118"

IX) Documents to be admitted

Item/Serial No.	Document No.	Exhibit Nos.
4	PW1-1	"P215"
5	PW1-2	"P216"
22	278	"P217"
33	282 & 282A	"P218"
107	37	"P219"
134	128 & 128A	"P220"
142	149	"P221"

(G.S. Patel, J.)

List marked “A1” for identification.

Document No.	Particulars	Page Nos.	Exhibit No.
270	Video recording of the 10th day of Muharram 1433 Hijri (December 5, 2011 as per Gregorian calendar) (duration 41 minutes 33 seconds contained in a DVD)	715A	“P222”
271	Video recording on occasion of Lailatul Qadr (night of destiny) which is the 23rd night of Ramadan (10th August 2012) during prayers at Saifee Masjid (duration 38 minutes 23 seconds) contained in a DVD.	715A	“P223”
272	Video recording of the 10th day of Muharram 1434 Hijri (November 23, 2012 as per Gregorian calendar) duration 33 minutes 3 seconds) contained in a DVD.	715A	“P224”

(G.S. Patel, J.)