

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **07.11.2016**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

Application Nos.5740 to 5742 of 2016

in

C.S. No.329 of 2013

1. M/s.Farida Shoes Pvt.Ltd.
rep.by its Authorised Signatory
Mr.D.C.Ravi

2. M/s.Farida Classic Shoes Pvt.Ltd.
Mr.D.C.Ravi

3. M/s.Kenmore Shoes Pvt.Ltd.
Mr.D.C.Ravi

.. Applicants in all the
applications

vs

M/s.Southern Roofings Pvt.Ltd.
rep.by its Director
Karim Mansion
No.787, Mount Road
Chennai 600 002.

.. Respondents in all
the applications

Prayer: Applications filed under Order XIV Rule 8 of O.S. Rules r/w Section 151 r/w Order XVII Rule 18 of the Code of Civil Procedure (i) to reopen the plaintiffs side evidence in the above suit; (ii) to recall PW2 and to let in evidence and (iii) to permit the applicants to file bank statements of the plaintiffs respectively.

For Applicants : Mr.Zaffarullah Khan
in all the applications

For Respondent : Mr.R.Vigneshkumar
in all the Applications for Mr.PL.Narayanan

COMMON ORDER

These applications have been filed by the applicants/plaintiffs to reopen the plaintiffs side evidence; (ii) to recall PW2 and to let in evidence and (iii) to permit the applicants to file bank statements of the plaintiffs respectively.

2. It is stated in the affidavit that there were some important bank statements to be marked as evidence in the above suit and if the same were not allowed to be filed, the plaintiffs would be put to irreparable loss. Further, it is stated that the plaintiffs' side evidence was closed and DW1 is in the box. The reasons leading to filing of these applications are explained in para No.2 of the affidavit filed in support of these applications. Further, these applications have been taken out, after PW2's evidence was closed on 18.08.2016 and DW1 is in the box.

3. Though it is a well settled principle that recalling the witnesses may not be a prerogative right of a party and cannot be ordered for the mere asking, in the interest of justice, the Court can always allow such applications.

4. The learned counsel for the respondent/defendant though vehemently opposed the applications, contending that when the evidence of PW2 was already over and DW1 is in the box, the applicants/plaintiffs cannot

be allowed to recall the said witness and to mark the bank statements.

5. As stated above, in para No.2 of the affidavit, the applicants/plaintiffs have explained the reasons for re-opening of the plaintiffs' side witness, recall PW2 to let in evidence and to mark the bank statements, which seem to a justifiable one.

6. Inasmuch as the reasons stated by the applicants/plaintiffs are satisfactory, this Court is inclined to allow these applications. Accordingly, all these applications are ordered, as prayed for, but however the documents sought to be marked as additional evidence can be marked subject to proof, relevancy and admissibility at the time of evidence. The trial Court is directed to follow the procedure as per the decision of the Honourable Supreme Court reported in **2001-3-SCC-1 (Bipin Shantilal Panchal Vs. State of Gujarat and another)** while dealing with the question of admissibility of documents during the course of trial at the stage of taking evidence when any objection is raised.

7. Therefore, the applicants/plaintiffs are permitted to file the documents, subject to proof and relevancy of those documents. It is open to the parties to raise their objections with regard to the admissibility and relevancy of those documents at the time of recording the evidence before the learned Additional Master-II and the learned Master shall record such objections leaving it to the Court to decide about the admissibility and

relevancy of those documents at the time of arguments.

8. With the above observations, all these applications are allowed. The Registry is directed to list the matter before the learned Additional Master-II for recording further evidence of PW2. As it is stated that DW1 is in the box, let his evidence be completed and thereafter, the plaintiff's side evidence be re-opened and PW2 may be recalled for letting in evidence, regarding the additional documents that are sought to be marked. The learned counsel for the applicants/plaintiffs shall produce the original documents before the learned Additional Master at the time of recording evidence. It is also directed that both the parties shall co-operate with the learned Additional Master-II in recording the evidence.

9. Registry is directed to place the papers before the learned Additional Master No.II to recall PW2 for the specific purpose of putting into questions, as mentioned in the affidavit filed in support of these applications. The said exercise may be done after completing the evidence of DW1.

07.11.2016

vj2

5

PUSHPA SATHYANARAYANA, J.

vj2

Application Nos.5740 to 5742 of 2016
in
C.S. No.329 of 2013

07.11.2016