

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P.No.20885 of 2016
and CrI.M.P.No.9683 of 2016

1.M/s Sree Harshi Infoway Private Ltd
No.1-9-292/7, Ramalayam Street
Vidya Nagar, Hyderabad - 500 044
Telengana State.

2.Srinivas Pelluri
3.Ujwala Sadurla
4.Vamsi Krishna
5.B.Subramanyam .. Petitioners

vs.

M/s Duralyst Energy Pvt Ltd
rep by its Director B.Baskar
At Aleena Tower, Plot No.288
Burma Colony, Perungudi
Chennai 600 096. .. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C.
to call for the records pertaining to the proceedings in
M.P.No.1485 of 2016 in C.C.No.284 of 2015 on the file of the
learned Judicial Magistrate (FTC) at Alandur and set aside the
impugned order dated 20.06.2016 in M.P.No.1485 of 2016 in
C.C.No.284 of 2015 and allow the petition filed in M.P.No.1485
of 2016 in C.C.No.284 of 2015.

For petitioners: Mr.K.V.Bhashyam Chari
For Respondent : Ms.R.Aparna

RESERVED ON	PRONOUNCED ON
16.09.2016	22.09.2016

O R D E R

This petition has been filed to call for the records pertaining to the proceedings in M.P.No.1485 of 2016 in C.C.No.284 of 2015 on the file of the Judicial Magistrate Court, (FTC) at Alandur and set aside the impugned order dated 20.06.2016 in M.P.No.1485 of 2016 in C.C.No.284 of 2015.

2. Heard the learned counsel for the accused/petitioners and the learned counsel appearing for the complainant/respondent.

3. For the sake of convenience, the petitioners and the respondent are referred to as accused and complainant respectively.

4. It is the case of the complainant that the complainant had supplied materials worth Rs.1,62,17,500/- to the accused and in discharge of the said liability, the accused had issued three cheques for Rs.20 lakhs each, which when presented by the complainant were dishonoured. The complainant issued statutory notices under Section 138 of the Negotiable Instruments Act to the accused and on the failure of the accused to comply with the demand, the complainant has filed C.C.No.284 of 2015, which is now pending on the file of the Judicial Magistrate, Fast Track Court, Alandur u/s 138 of the Negotiable Instruments Act against the accused.

5. On service of summons, the accused entered appearance and after they were questioned on the accusation against them, they pleaded "not guilty". On behalf of the complainant, P.W.1 was examined-in-chief on 11.01.2016 and was cross examined on three dates, namely 29.02.2016, 05.03.2016 and 09.03.2016 by the accused.

6. In the mean time, on the application filed by the complainant under Section 311 Cr.P.C., the Court permitted the complainant to examine P.W.2. P.W.2 was examined-in-chief on 09.03.2016 and at the request of the counsel for the accused, the case was adjourned to 22.03.2016, on which date P.W.2 was cross examined in full by the accused. Thereafter, the accused were questioned under Section 313 Cr.P.C. and the case was posted for evidence on behalf of the accused. At that juncture, the accused filed C.M.P.No.1485 of 2016 in C.C.No.284 of 2016 u/s 311 Cr.P.C to once again recall P.W.2 for the purpose of further cross examination. The trial Court after hearing both sides dismissed the petition on 20.06.2016, challenging which the accused are before this Court.

7. Learned counsel for the accused submitted that the accused never adopted dilatory tactics before the trial Court

and participated in the trial without seeking unnecessary adjournment. He submitted that after the cross examination of P.W.2 was recorded on 22.03.2016, he applied for a certified copy of the deposition and after reading it he found that, he had failed to put several important questions to P.W.2 and therefore, the petition u/s 311 Cr.P.C. was filed.

8. Learned counsel for the complainant strongly refuted the contentions and submitted that P.W.2 was thoroughly cross examined and P.W.2 had thereafter, left for the USA, which fact was known to the accused, despite which they have filed the present petition u/s 311 Cr.P.C.

9. This Court gave its anxious consideration to the rival submissions.

10. The fact remains that P.W.2 was examined-in-chief on 09.03.2016 and at the request of the accused, the case was adjourned to 22.03.2016, on which date P.W.2 was cross examined thoroughly. There are sufficient materials on record to show that the accused knew that P.W.2 left for the USA immediately after his cross examination and that he is not available. That apart, in the petition filed u/s 311 Cr.P.C., the accused had not disclosed the reasons for recalling P.W.2, for which the learned counsel for the accused submitted that he cannot reveal his defence in the petition, as that would alert the witness. It is true that the accused need not reveal his defence, but nevertheless, the accused must make out a case for the trial Court to exercise its power u/s 311 C.P.C. for recalling a witness, who has already been subjected to cross examination.

11. The Supreme Court in A.G. vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649] has laid down the parameters for recalling a witness u/s 311 Cr.P.C. The ipse dixit of the accused in the petition that certain important questions have to be put to the witness, can by no stretch of imagination be a sound reason to recall a witness, who is admittedly in the USA.

In the result, this petition is devoid of merits and the same is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

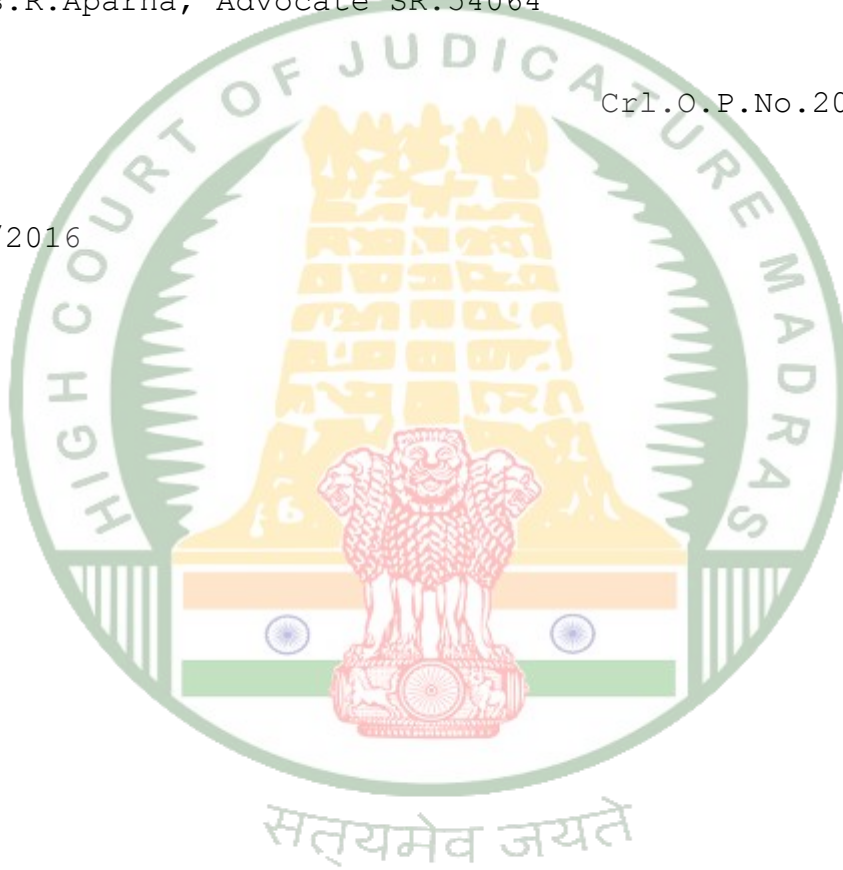
gms
To

1. Judicial Magistrate (FTC),
Alandur.
2. -Do-Thro The Chief Judicial Magistrate,
Chengalpattu.

+cc to M/S.K.V.Bhashyam Chari, Advocate Sr.Sr.54080
+lcc to Ms.R.Aparna, Advocate SR.54064

Crl.O.P.No.20885 of 2016

skv[co]
srg 14/10/2016



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