

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 27TH DAY OF APRIL 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A.No.2853 of 2018
in
C.S.No.1311 of 1994

**M/s.Salem Stainless Steel Suppliers
Private Ltd., rep. by its Director,
P.Shantilal Jain,
No.33, Lawyer Chinna Thambi Street,
Kondithope, Chennai-79. (*)** ... Plaintiff

-Versus-

M/s.Sumeet Machines Limited,
rep. by its Managing Director,
Mr.Ajay Mathur,
office at No.603, Poonam Chambers,
Shivanagar Estate, Worli,
Bombay-400 018. ... Defendant

(*)Amendment carried out as per order
dated 08.07.2013 in A. No.2655 of 2013
extended by order dated 16.07.2013

A.No. 2853 of 2018:

M/s. Sumeet Machines Ltd.,
No.603, Poonam Chambers,
Shivannagar Estate,
Worli, Mumbai 400 018.
Represented by its Managing Director
Mr.Ajay Mathur. : Applicant/Defendant

-Vs.-

M/s. Salem Stainless Steel
Suppliers(P) Ltd.,
Having office at No.33,
Lawyer Chinna Thambi Street,
Kondithope, Chennai 600 079.
Represented by its Director
Mr.P.Shanthilal Jain ... Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased to
permit the applicant to file photocopies of the documents set

out at Paragraph 5 of the Affidavit and to mark them as Exhibits during the examination of DW1 and extend the time by a maximum of two weeks from the date of passing of an order in this application to complete the evidence of DW1 and

S.No.	Date	Document	Nature
1	22.08.1991	Consignee Agency Agreement	Photo copy
2	13.08.1992	Letter addressed by M/s. Sekar and Sagar to the Defendants along with the Statement of Accounts	Photo copy
3	11.09.1992	Letter addressed by the Defendant to Mr.Shantilal, of M/s. Sekar and Sagar	Photo copy
4	22.02.1999	Order passed in C.P.No.316 of 1994 passed by the Hon'ble Bombay High Court	Photo copy
5	21.02.1995	Letter addressed by the Defendant to M/s. Sekar and Sagar	Photo copy
6	31.03.1994	Debit Note raised by the Defendant	Photo copy

This application coming on this day before this court for hearing the court made the following order:-

This application has been filed by the Defendant, seeking permission to file photocopies of the documents and mark them as exhibits during the examination of DW.1

2. The documents, for which photocopies are sought to be marked, are as follows:-

1.Consignee Agency Agreement, dated 22.8.1991.

2.Letter dated 13.08.1992, addressed by M/s.Sekar and Sagar to the Defendant along with the statement of accounts.

3.Letter dated 11.9.1992, addressed by the Defendant to Shantilal of M/s.Sekar and Sagar.

4.Order dated 22.2.1999 passed in CP.No.316 of 1994 passed by the Bombay High Court.

5.Letter dated 21.2.1995 addressed by the Defendant to M/s.Sekar and Sagar.

6.Debit Note dated 31.03.1994, raised by the Defendant.

3. The suit in CS.No.1311 of 1994 had been filed for recovery of a sum of Rs.1,81,72,084/- together with interest and costs.

4. As is seen from the cause title, the suit is nearly 23 years old. The witnesses for the Plaintiff alone had been examined and cross examined. Evidence on the side of the Defendant has to commence. It is at that stage that this application has been filed, seeking permission to file xerox copies.

5. The reasons for non production of the primary documents had been given in the affidavit that the Registered Office was situated at No.601, C.Poonam Chambers, Shivsagar Estate, Dr.Annie Besant Road, Mumbai 400 018, wherein all documents had been kept. However, the said building collapsed in and around the year 1997. There was also a fire accident. The original documents could not be removed by the Applicant/ Defendant. He had retained the photocopies in the Factory at Nasik. It is under these circumstances that the

Applicant/ Defendant has filed this application, seeking permission to file the photocopies of the documents.

6. A counter has been filed by the Respondent/ Plaintiff. It has been stated that a specific time frame had been given by the Court for the trial to be conducted. In the counter, the genuineness of the photocopies has been seriously disputed. It has been stated that they are not even xerox copies and they are scanned copies. It is not clear whether the documents now produced are copies of the originals. It has been stated that the Defendant had been deliberately dragging on the proceedings.

7. This court heard the arguments of the learned counsel on either side.

8. It is clear from the records that the suit is progressed at a snail's pace from the time of its inception. Both sides delayed the progress of the suit to the maximum extent possible. Now it has come to the turn of the Defendants to let in oral evidence. At that stage, the Defendant has stated that since the building, wherein the Registered Office was located at Mumbai, had collapsed and there was also a fire accident in 1997, they could produce only xerox copies. These averments have not been made earlier. However, a perusal of the documents shows that they relate to letter addressed by M/s.Sekar and Sagar to the Defendant, debit note and also the Consignee Agency

Agreement. Genuineness of the documents have been very seriously disputed by the learned counsel for the Plaintiff. At this stage of the proceedings, I am not prepared to enter into a discussion regarding the genuineness of the documents.

9. Both sides have relied on several precedents, wherein the conditions within which the xerox copies can be admitted in evidence, have been stated. On consideration of the precedents, the following conditions are imposed:-

- i. It is made clear that marking of the documents by giving exhibit numbers would not mean that the documents had been proved in a manner known to law.
- ii. Giving exhibit numbers would also not automatically imply that the documents are true copies of the originals.
- iii. Marking of the photocopies would also not imply that the originals have actually been destroyed and that the Defendant produced xerox copies as secondary evidence only out of inability to produce the primary documents.
- iv. The Plaintiff has to advance arguments regarding genuineness, relevancy and proof of the documents at the time of arguments in the suit.
- v. The Defendant would have to explain as to the reason why the primary documents have not been produced and also the circumstances surrounding the documents now produced and would also have to adduce acceptable evidence that the documents produced are actually true copies of the originals.
- vi. Relevancy of the documents will be decided at the time trial.

10. The above course is adopted since the suit is of the year 1994. It is also made clear that both the parties should not protract the trial further. Consequently, the above order is passed and the application is allowed on the above terms. No costs.

Sd/.C.V.K.J

27.04.2018

//Certified to be a true copy//
Dated this the day of 2018

JJ 03/05.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.