

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 17TH DAY OF SEPTEMBER 2018

THE HON'BLE MR. JUSTICE M.SUNDAR

A.No.6043 of 2018

AND

C.S.No.190 of 2012

P.P.Thomas,
Government Contractor,
Palannattil House,
Kunnacckaal P.O.,
Muvattupuzha, Ernakulam District,
Kerala 682 316 ...Plaintiff

-vs-

1.The State of Tamil Nadu
Rep.by the Secretary to the
Government PWD, Secretariat
Fort St.George, Chennai 600 009

2.Superintending Engineer, PWD
Periyar Dam Special Circle,
Madurai 625 002
presently at PWD, Water Resources Organization
Periyar Vaigai Basin Circle,
Near Central
Market, Madurai 625 001 ...Defendants

सत्यमेव जयते

A.No.6043 of 2018

1.The State of Tamil Nadu
Rep.by the Secretary to the
Government PWD, Secretariat
Fort St.George, Chennai 600 009

2.Superintending Engineer, PWD
Periyar Dam Special Circle,
Madurai 625 002
presently at PWD, Water Resources Organization
Periyar Vaigai Basin Circle,
Near Central
Market, Madurai 625 001 ...Applicants/Defendants

Government Contractor,
 Palannattil House,
 Kunnacckaal P.O.,
 Muvattupuzha, Ernakulam District,
 Kerala 682 316

...Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased to receive the documents viz (i) the copy of the final bill dated 15.09.1994 prepared by the Executive Engineer, PWD Periyar Dam Spl Division, Cumbum, to the contractor P.P.Thomas bearing cash book voucher no.31PD/9.94(ii) Extract of Cash Book pertaining to the final bill dated 15.09.1994 (iii) Extract of Cheque memo registere showing the cheque prepared on 15.09.1994 and (iv) Power of attorney dated 22.08.1989 executed by the Plaintiff in favour of the Catholic Syrian Bank registered as document No.176 of 1989 in the offie of Sub Registrar, Cumbum as evidence on behalf of the Defendants.

This Application coming on this day before this court for hearing, the court made the following order:

Defendants 1 and 2 in the main suit are applicants 1 and 2 respectively in the instant application. Sole plaintiff in the main suit is lone respondent herein. Parties in this application are referred to by their respective ranks in the main suit, for the sake of convenience and clarity.

2.Mr.C.Manishankar, learned Additional Advocate General, leading Mr.M.Venugopal, learned Special Government Pleader on record, for the defendants is before this Commercial Division on behalf of applicants herein and Mr.K.F.Manavalan, learned counsel on record for the plaintiff, who is the sole respondent herein, is before this Commercial Division.

documents and enumeration of those four documents are as follows:

- (i) Copy of the final bill dated 15.09.1994 prepared by the Executive Engineer, PWD, Periyar Dam Spl. Division, Cumbum, to the contractor P.P.Thomas bearing cash book voucher no.31PD/9.94;
- (ii) Extract of Cash book pertaining to the final bill dated 15.09.1994;
- (iii) Extract of Cheque memo register showing the cheque prepared on 15.09.1994; and
- (iv) Power of attorney dated 22.08.1989 executed by the Plaintiff in favour of Catholic Syrian Bank registered as document No.176 of 1989 in the office of Sub Registrar, Cumbum, as evidence on behalf of the Defendants.

4. Though counter-affidavit has not been filed by the plaintiff, learned counsel for plaintiff submits that the defendants were called upon to produce the aforesaid four documents earlier and they did not do so. Learned counsel submits that the prayer in this application is being opposed on this ground.

5. I have perused the affidavit filed in support of the instant application and I find that the prayer is innocuous.

6. In the light of the innocuous prayer, which has been made primarily under Order VIII Rule 1 (A) (3) of The Code of Civil Procedure, 1908 ('CPC', for brevity), I am of the view that opposition to this application on the ground that the defendants earlier chose not to produce the aforesaid four documents, though they were called upon to do so, does not merit consideration.

7.However, I have considered the opposition and I find, it is not tenable. It is certainly not good enough to refuse the prayer that has been sought for.

8.I am of the considered view that it would meet the ends of justice if the prayer in the instant application is acceded to with the usual caveat/rider that documents filed/received are subject to proof and relevance.

9.This application is ordered, subject to the caveat that the four documents filed/received will be subject to proof in a manner known to law and relevance.

Application is ordered on above terms.

Sd/.M.S.J

17.09.2018

//Certified to be a true copy//

Dated this the th day of 2018.

KY/24.09.2018

COURT OFFICER

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

WEB COPY