

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)

Judgment Reserved on	02.04.2019
Judgment Pronounced on	27.06.2019

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN

A.Nos.1227 and 1229 of 2019

in
C.S.No.849 of 2014

M/s. Ramaniyam Real Estates Private Ltd.,
having their registered office at
No.17/35, 2nd Main Road,
Gandhi Nagar, Adyar,
Chennai 600 020 ...Plaintiff

-vs-

M/s. Spencer's Retail Limited,
having its registered office at
Duncan House, 1st Floor,
31, Netaji Subhash Road
Kolkata 700 001
Rep.by its authorised signatory
Mr.MuraliDefendant

A.Nos.1227 & 1229 of 2019:

M/s. Ramaniyam Real Estates Private Ltd.,
having their registered office at
No.17/35, 2nd Main Road,
Gandhi Nagar, Adyar, सत्यमेव जयते
Chennai 600 020 ...Applicant/Plaintiff

-vs-

M/s. Spencer's Retail Limited,
having its registered office at
No.769, Anna Salai,
Chennai 600 002
Having its Corporate Office at
Duncan House, 1st Floor,
31, Netaji Subhash Road
Kolkata 700 001
Rep.by its authorised signatory
Mr.Jathin Das

...Respondent/Defendant

A.No.1227 of 2019:

Application praying that this Honble Court be pleased to reject the proof affidavit filed by one G.R.Srikanth on behalf of defendant as party to the proceedings.

A.No.1229 of 2019:

Application praying that this Honble Court be pleased to reject the affidavit of admission and denial filed by one P.Srinivasan on behalf of defendant without making any inspection.

These Applications coming on this day before this court for hearing the court made the following order:

Application No.1227 of 2019 is filed seeking to reject the proof affidavit filed by one G.R.Srikanth on behalf of the Defendant, as party to the proceedings and Application No.1229 of 2019 is filed seeking to reject the affidavit of Admission and Denial filed by one P.Srinivasan on behalf of the Defendant, without making any inspection.

2.The Applicant and the Respondent in both the Applications are the Plaintiff and the Defendant, respectively, in the Suit.

3.It is stated by the Applicant herein that the Suit was posted for "Case Management Hearing" on 19.12.2018 and it was re-notified to 11.01.2019. On 11.01.2019, the parties filed their Proof Affidavit after exchanging copies and this Court directed the parties to let in evidence and the matter was posted before the Additional Master IV after 2019 Pongal holidays 'for recording evidence'.

<https://hcservices.ecourts.gov.in/hcservices/> is the case of the Applicant that the Defendant filed an Affidavit of Admission and Denial through one

P.Srinivasan, who claims to be the authorized signatory of the Defendant, without making any inspection of documents as mandated under Order XI Rule 3(1) of the Commercial Courts Act, 2015 and to the contrary, one Ms.Prashanthi, Advocate has inspected the documents in the Applicant's Counsel's Office on 06.10.2018. It is the contention of the Applicant that the said P.Srinivasan has not accompanied his counsel either on 06.10.2018 or subsequent dates, till date and hence, he is not competent to swear an affidavit of admission and denial of documents and that his affidavit is only based on hearsay evidence.

5. In the counter Affidavit, the Respondent has stated that on 24.01.2019, the counsel for the Respondent was present before the Additional Master for marking of Applicant's documents (chief-examination) and that the counsel for the Applicant did not allow the counsel for the Respondent to raise objections during the marking of Applicant's documents by stating that once an Affidavit of Admission and Denial is filed, the counsel cannot object to marking of any document. According to the Respondent, there is no bar in raising objections during marking of documents at the time of trial proceedings based on the fact that an Affidavit of Admission and Denial of documents has been filed, and that raising of objections by the Counsel during trial is subject to the decision of the Hon'ble Judge at the time of final arguments.

6. The Respondent has further stated in the counter affidavit that the Applicant herein filed a Memo dated 28.01.2019 before the Additional Master to list the matter before this Court by alleging that the Respondent was absent for both the hearings. According to the Respondent, such allegation is a blatant lie, as court records would amply prove the presence of the Respondent's counsel.

7. Denying the allegation of the Applicant that the signatory to the proof affidavit is not acquainted with the transactions of the case on hand and that he is not an authorized signatory, the Respondent has stated that one G.R.Srikanth is the Vice-President (Legal) of the Respondent Company and he has been duly authorized vide Board Resolution dated 12.10.2018 and that it is absurd on the part of the Applicant to state that since the said signatory is not a party to the Agreements forming the subject matter of the suit, he is not eligible to represent the Company.

8. Mr.S.Sundaresan, learned counsel for the Applicant submitted that the person who has filed an Affidavit with regard to Admission and Denial of Documents has to be examined, as, the person who has made the denial of documents, cannot be put into cross-examination by another person. He drew the attention of this Court to Order XI Rule 3(1) of the Commercial Courts Act, 2015, to state that the said provision abundantly makes it clear that the party who wishes to make an Affidavit of Admission and Denial of documents, must inspect the documents and only thereafter,

they can file an Affidavit of admission and denial of documents.

9. According to the learned counsel for the Applicant, the Respondent/Defendant is a Company and as per the Companies Act, only, persons who are authorized to represent the Company can be construed as witness and the person, who is not connected with any of the transactions of the Company and not on Board, cannot be allowed to swear as a party to the proceedings.

10. On the other hand, Mr. Arun C. Mohan, learned counsel appearing for the Respondent/Defendant submitted that there is a clear distinction between 'conducting inspection' and 'admission and denial of documents' and that there is no need that the very same person, who has admitted and denied the documents filed by the Applicant, be put into witness box. Referring to Order XI Rule 3(1) of the Commercial Courts Act, 2015, learned counsel submitted that the said proviso is applicable at the time of letting in evidence and not at the time of marking of documents.

11. Learned counsel appearing for the Respondent drew the attention of this Court to Chapter VIII of the Delhi High Court Rules, which pertain to Admissions, Denials, Framing of Issues and Examination of Parties. **Rule 1-A** of Chapter VIII reads as under:

"[1-A] Proceeding at the First hearing - On the date fixed for defendant's appearance, the parties or their advocates, shall produce before

the Court all the documents in their power or possession upon which they intend to rely. On the first hearing, the Court shall ascertain from each party or his advocate, whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party, against whom they are made. The Court shall record such admissions or denials. "

12. The analogy applied in the Delhi High Court Rules can also be applied to the case on hand, as there is no bar for an Advocate to inspect, admit or deny the documents on behalf of the party, for whom, he/she has filed Vakalat.

13. In support of his case, learned counsel appearing for the Respondent/Defendant has relied on a decision of the Apex Court rendered in the case of **Sangram Singh vs. Election Tribunal, Kotah**, reported in **AIR 1955 SC 425**, wherein, it is held as under:

"16. Now a code of procedure must be regarded as such. It is *procedure*, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should

therefore be guarded against (provided always that justice is done to *both sides*) lest the very means designed for the furtherance of justice be used to frustrate it."

14. In reply, learned counsel for the Applicant submitted that the party will have to inspect the documents and only thereafter, Affidavit of Admission and Denial of documents has to be filed. According to him, in the case on hand, no party has inspected the documents, but, based on the advice given by the counsel, Admission and Denial of documents has been made.

15. Heard the learned counsel on either side and perused the material documents available on record.

16. On a reading of the provisions of the Commercial Courts Act, 2015 it is clear that documents have to be inspected by the parties. The word 'parties' include 'duly authorized Advocates', who are entrusted with the brief. Thereafter, Affidavit of Admission and Denial of documents need to be filed. Commercial Courts Act, 2015 has been introduced for the purpose of speedy disposal of Civil matters within a time limit. Otherwise, the purpose of the enactment would be defeated. In this case, the party has not conducted any inspection of documents and only the counsel has inspected the documents. Based on the advice of the counsel, an Affidavit of Admission and Denial of documents has been filed by one Srinivasan and proof affidavit has been filed by one G.R.Srikanth.

17. Strictly speaking, there is no need for the very same person, who has inspected the documents, to file an Affidavit of Admission and Denial of documents. In this case, no party has gone for inspection and there is no need for the party to go for inspection of documents when the responsibility is vested with the Advocate. Proof affidavit filed by one G.R.Srikanth needs to be given a second thought. If the said Srikanth had inspected the documents and filed an Affidavit based on instructions from the counsel, certainly, this Court would not have any hesitation to accept the same. As no party had gone for inspection, this Court is of the view that the person, who is going to file an Affidavit must state that only on instructions from the person who has inspected the documents, Admission and Denial of documents has been filed.

18. The contention of the Applicant that the very same person who has gone for inspection, will have to file an Affidavit of Admission and Denial of documents, cannot be accepted. The two are independent of each other and it is suffice that the person, who has filed an Affidavit of Admission and Denial of documents, has knowledge about inspection.

19. It is true that the provisions of the Commercial Courts Act, 2015 deal with inspection of documents by parties to avoid any further delay. It does not mean that the party should be present at the time of inspection and it is suffice that the Advocate who has been entrusted with the

work of inspecting the documents, either admits or disputes the same. If any wrong admission is made by the counsel without instructions, it is for the party to proceed against the counsel. Also, if any fabricated document is filed, it is for the other side to bring the same to the notice of this Court for appropriate action to punish the person, who has filed the documents. As documents form part of the plaint and the Written Statement, it is mandatory to include the same along with the plaint and the Written Statement.

20. Furthermore, it is not necessary that the original document should be filed. However, the same will have to be produced at the time of letting in evidence for the purpose of verifying the genuineness and veracity of the same. If a person is not aware of the contents of the documents, it is easy for the learned counsel appearing on his behalf to cross-examine the same to elicit answers that the person who is in the witness box is not aware of the statement made by another person. When the party is a Company, it is not necessary that the person, who has sworn in the plaint or in the Written Statement, need to be examined. Whether one G.R.Srikanth has got knowledge or not, can be elicited in the cross-examination, as evidence has been filed on behalf of the Company based on the records.

21. A reading of Order XI Rule 1 (2) and (3) would make it very clear that documents should be filed along with the plaint or the Written Statement and in that event, the rival parties must be aware of the documents filed and that

one party contending that the other party should be present for examination of documents cannot be accepted.

22. It is also to be noted that parties referred to under Order XI (2) of the Commercial Courts Act include 'Advocates'. A party who is residing at a far off place cannot be expected to come and scrutinize the documents and an Advocate, who is representing the party can very well scrutinize the same. Hence, it is not necessary that the party should be present along with the Advocate while scrutinizing the documents. That apart, when the facts and documents are admitted by the other side, there is no need for the facts to be proved. Only if documents are not admitted, the same have to be marked through evidence.

23. At this juncture, it is worth referring to Section 58 of the Indian Evidence Act, which reads as under:

"58. Facts admitted need not be proved - No fact need be proved in any proceeding which the parties hereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

24. In view of the above provisions, this Court is of the considered opinion that if the party is allowed to inspect the documents and participate in the exercise of admission and denial of documents, particularly when the party has already entrusted the proof to the counsel, asking the parties once again to appear and inspect the documents will definitely delay the proceedings and defeat the purpose of enactment of the Commercial Courts Act, 2015. **Therefore, the above Applications fail and stand dismissed.**

sd/-S.V.N.J

27.06.2019

//Certified to be a true copy//
Dated this the day of 2019.

R.s/01.07.2019

COURT OFFICER

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

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