



C.S.No.167 of 2018

R.N.MANJULA, J.

The matter is caused to be listed today in view of the following endorsement made by the learned Additional Master-IV on 25.07.2023:

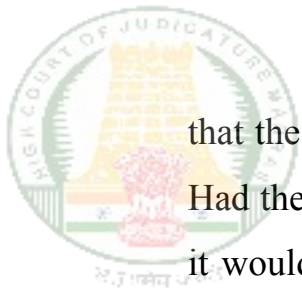
“ The counsel for D1, D2 is present. The counsel for plaintiff is present. P.W.1 is also present. The case stands posted for P.W.1 cross continuation. In the afternoon session. P.W.1 is present. Both side counsels are present. P.W.2 is further cross examined in part. The counsel for the defendant put Q.No.30 and about to mark the email said to have been sent by the plaintiff and for that the counsel for the plaintiff objected to mark. Hence to clarify about the issue, post before the Court.”

2. When the matter is taken up today, the learned counsel for the plaintiff submitted that the plaintiff who was examined as P.W.1 had denied the documents shown to him, but the learned counsel for the defendants insisted to mark the documents and that has caused to list the matter today before this Court. The learned counsel for the plaintiff further submitted that during the cross-examination, the plaintiff's witness was confronted with an e-mail dated 11.09.2015 and the same was admitted by the witness, however it was omitted to be marked.

3. To gather more clarity it is relevant to reproduce the recording of the proceedings made by the learned Additional Master-IV in respect of Question No.30 of the cross-examination of P.W.1, which is extracted hereunder:

“Q.30: (A document is shown to the witness.) This mail dated 11.09.2015 was sent by you to the defendant. Is it correct ?”

When the counsel for the defendants had raised a question whether the mail dated 11.09.2015 was sent by the defendant, the plaintiff answered



that the mail address is correct but he did not remember sending that mail. Had the witness answered in the affirmative that the mail was sent by him, it would not have been a fuss to mark the same as defendant's document during the cross of P.W.1.

4. Though the observation made by the learned Additional Master-IV is not in clear terms, it can be presumed that the defendant's counsel claimed that the witness had admitted that he is the author of the document and hence it should be marked through him and for which the plaintiff's counsel raised objections.

5. When P.W.1 was confronted with the mail dated 11.09.2015, he had not in any categorical terms admitted that it was the mail sent by him. The answer of the witness was evasive and he has stated that he did not remember sending the mail. In such a context the witness need not be compelled that he should admit the sending of the mail and hence it cannot be marked through him. The defendant who is the receiver of the mail is open to re-examine himself and mark the document.

6. Hence the matter is ordered to be listed before the learned Additional Master-IV on 16.08.2023 for continuation of recording of evidence. The parties are required to be present before the learned Additional Master-IV on the said date.

09.08.2023

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