

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2019

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

O.S.A. No. 245 of 2019

&

C.M.P. No. 21158 of 2019

M/s. Jain Jubilant Cars Pvt. Ltd.,
rep. by its Managing Director,
Mr. Sushil Mehta,
No.157, North Usman Road,
T. Nagar, Chennai - 600 017. ...Appellant

Vs.

M/s. Entex Private Limited,
rep. by its Managing Director,
Mr.B.C.B. Reddy,
T/54, 2nd Floor, III Avenue,
Anna Nagar, Chennai - 600 040. ...Respondent

Prayer: Original Side Appeal to set aside the order dated 05.09.2019 in C.S. No. 270 of 2018 directing the appellant to raise its objection about the marking of the document.

The Civil suit filed under order IV Rule 1 of the Under Rules read with order VII Rule 1 of C.P.C., 1908 read with the Commercial Court, Act, 2015 directing the defendant to pay to the plaintiff a sum of Rs.7,98,01,000/- together future interest at the rate of 18% per annum on the Principal sum of Rs.6,59,73,000/- from the date of plaintiff till date of realization, the transaction being the commercial in nature.

For Appellant :: Mr.A.K. Mylsamy

For Respondent :: Mr. R. Thiagarajan

JUDGMENT

(Judgment of the Court was delivered by N. KIRUBAKARAN,J.)

The above appeal is directed against the order of the learned Single Judge dated 05.09.2019 in C.S. No. 270 of 2018.

2. The suit in C.S. No. 270 of 2018 has been filed by the respondent herein for recovery of a sum of Rs.7,98,01,000/- together with future interest @ 18% per annum on the principal sum of Rs.6,59,73,000/- from the date of plaint till the date of realisation. After service of summons, written statement was filed and the suit was posted for trial. When the matter came up before the learned Master for recording evidence, the Managing Director of plaintiff/respondent herein was examined as P.W.1 by filing proof affidavit. A xerox copy of the lease deed dated 10.04.2011 entered into between the appellant and the respondent was marked as Ex.P1 by the respondent. However, at the time of marking the said document, the appellant was not present. Subsequently, objection was raised on behalf of the appellant regarding the marking of xerox copy of the lease deed and it was also pointed out that the said document was not registered and duly stamped. Hence, the learned counsel for the appellant requested the learned Master to submit records before the Hon'ble High Court for deciding the marking of the lease deed.

3. Accordingly, when the matter came up for consideration before the learned Single Judge on 05.09.2019, after going through the document and the proceedings, the learned Single Judge observed that it is open to the appellant to raise a specific objection with regard to the admissibility of the document namely, Ex.P1 dated 10.04.2011 and that the learned Master shall record the objection specifically in the deposition itself. It was also observed that the objection with regard to the admissibility of documents will be dealt with at the time of final disposal of the case. As against the said order, the present appeal has been filed.

4. Heard Mr.A.K. Mylsamy, learned counsel for the appellant and Mr.R. Thiagarajan, learned counsel for the respondent.

5. Though very many contentions were raised with regard to admissibility of a document, which is not properly stamped and registered by citing various judgments, for and against, it is evident from the records that at the time of filing the proof affidavit, copy of the same had not been served on the appellant. Therefore, the appellant could not be present at the time of filing of proof affidavit through P.W.1 as well as marking of the document namely, xerox copy of the lease deed. If the appellant had been put on notice, the appellant would have been present in Court and objected to the marking of the said document. No such

opportunity had been given to the appellant and that being so, the very filing of the proof affidavit and taking the same on file is not proper. Therefore, taking on the proof affidavit of P.W.1 on file and marking of documents including Ex.P1 are set aside. The matter is remanded back to the learned Master. Since notice has been given to the appellant at present, both the parties are directed to appear before the learned Master on 17.12.2019 and on that day, the respondent/plaintiff can file proof affidavit and regarding the marking of the document, the appellant is at liberty to raise its objection. The learned Master is directed to deal with the objection, if any, raised by the appellant, as per law.

6. The Original Side Appeal is allowed with the above observation. No costs. Connected C.M.P. is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Sub Assistant Registrar,
Original Side,
High Court of Madras.

2. The Posting Clerk,
Master Posting, Original Side,
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(Post before Master on 17/12/2019)

+1 cc to M/s.R.Thiagarajan, Advocate Sr.No. 102891

AKM/11.12.19/3P-4C /

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