

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 16TH DAY OF DECEMBER 2019

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

A.No.9667 of 2019

in

C.S.NO.331 OF 2019

M/s.Statco Infraprojects Ltd.,
No.4/4, Justice Ramanujam Street,
Ground Floor,
Malavya Avenue,
Thiruvananthapuram,
Chennai-600 041.

..Petitioner/Plaintiff

-vs-

M/s.Narendra Properties Ltd.,
rep. by its Managing Director,
Mr.Chirag Maher,
Makanji House, 2nd Floor,
49 (Old 25), Barnaby Road,
Kilpauk, Chennai-600 010.

..Respondent/Defendant

Application praying that this Hon'ble Court be pleased to direct the Respondent/Defendant to produce the Originals of the Documents mentioned in the Schedule (in the petition) on oath.

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

This application is filed to direct the respondent to produce the original of the documents specified in the schedule to the judge's summons.

2. I heard the submissions of the learned counsel for the applicant and the learned counsel for the respondent.

3. The learned counsel for the applicant submitted that

the first suit was filed by the respondent for recovery of money from the applicant/plaintiff herein and that the main defence of the applicant is that the suit is barred by limitation. He further submits that the applicant has filed a suit for declaration that the alleged letters of confirmation of balance dated 31.03.2014 and 31.03.2015 are null and void.

4. In support of his submissions, the learned counsel contended that the notice under Section 138 of Negotiable Instruments Act, dated 19.03.2016, does not refer to the alleged letter dated 31.03.2015, although it is subsequent to the said letter. In fact, he submitted that this letter dated 31.03.2015 was first referred to in the lawyer's notice dated 04.07.2017. These facts indicate that the said letter is not genuine and this can only be ascertained, if the original of the promissory note and the letters of confirmation of balance are produced before this Court.

5. In response, the learned counsel for the respondent submitted that the letter of confirmation of balance dated 31.03.2015 is not relevant for the purpose of the Section 138 notice and, therefore, it was not mentioned therein. He further submitted that the applicant has admitted that a loan was taken from the respondent and also admitted the execution of the promissory note dated 01.04.2013. After admitting the said facts, he submitted that the defence of the applicant is that all these documents were signed by Nandkishore Sonthalia. He further submitted that the

originals of these documents would be produced at the time of trial and that it is not necessary to produce the originals at this juncture.

6. By way of rejoinder, the learned counsel for the applicant pointed out that contemporaneous admitted documents are available for comparison with the disputed documents. In specific, he pointed out that there is a letter dated 21.09.2012, which is not disputed by the respondent and this document could be compared with the originals of the disputed confirmation of balance letters.

7. The submissions of the learned counsel were considered and the affidavit, counter and relevant documents were examined.

8. The question that arises for consideration is whether the respondent should be directed to produce the originals of the promissory note dated 01.04.2013 and the confirmation of balance letters dated 26.04.2013, 31.03.2014 and 31.03.2015. It is the admitted position that pleadings have been completed in both suits and that the suits are at the stage of framing of issues. In addition, in the suit for recovery of money, the burden of proof would be on the respondent herein/plaintiff in the said suit to prove its entitlement to the suit claim and to establish that the suit is not barred by limitation.

9. For this purpose, the respondent herein would be required to adduce relevant evidence, including evidence to refute the defence of limitation. Consequently, the

respondent would be required to prove the disputed documents, including the letters of confirmation of balances. Therefore, at this juncture, the production of these original documents does not advance the case of the applicant. As per the learned counsel for the applicant, the admitted document is the letter dated 21.09.2012. Unless the said document is first brought on record, there is no scope for comparison with the disputed documents. Therefore, at this juncture, the application for production of the originals of the defendant is liable to be rejected. Needless to say, the applicant is at liberty to take out an appropriate application for examination of the disputed documents by comparing the same with any admitted contemporaneous document so as to establish the defence in the suit filed by the respondent or to establish the case in the suit filed by the applicant herein.

10. This application is disposed of with the above observations.

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Sd/.S.K.R.J.

16.12.2019

//Certified to be a true copy//

Dated this the day of 2020.

SU/02.01.2020

COURT OFFICER

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