

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 14TH DAY OF FEBRUARY 2020

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

A.NOS.548 AND 549 OF 2020

IN

C.S.NO.400 OF 2017

M/s.MILLENIUM STEEL INDIA PVT LTD

Rep.by its Managing Director,

Mr.D.Hari Prasad Reddy, No.98,

Halls Road , 3rd Floor,

Kilpauk, Chennai-600 010

..Applicant/Plaintiff
in both application

-vs-

IND BARATH ENERGIES (THOOTHUKUDI) LTD.,

Rep.by its Managing Director,

Having Registered Office at,

No.20 ,Chamiers Road,

Nandanam, Chennai-600 035.

..Respondent/Defendant
in both application

A.No.548 of 2020:

This application praying that this Hon'ble court be pleased to permit the Applicant to let in secondary evidence by marking the notarised copy of the documents in Annexure -A as Exhibits together with the notarised certificate.

A.No.549 of 2020:

This application praying that this Hon'ble court be pleased to permit the Applicant to file additional documents in Annexure B as Exhibits and marked the same.

These applications coming on this day before this

Court, for hearing the court made the following order:

<https://hcservices.ecourts.gov.in/hcservices/>

Heard the learned counsel for the applicant and the

learned counsel for the respondent.

2. The plaintiff is the applicant in these applications filed for seeking leave of this Court to file additional documents mentioned in Annexure (A) & (B).

3. According to the applicant these documents are related to the sale transaction between the plaintiff and the defendant. The originals of these documents were submitted to the customs authority while clearing the goods. The photocopies of the original documents were duly notarised by the plaintiff. The second original given by the plaintiff was lost in transit. Therefore, in order to mark documents as the secondary evidence, applications have been taken out in the suit.

4. Counter filed by the respondent/defendant. Pointing out that there is contradiction in the plaint averments and the affidavit filed in support of the present applications submitted that plaintiff is approbating and reprobating the same facts with contradictory facts to that of the plaint averment, the present applications are filed. The second original of the High Sea Sales (HSS) agreement if lost in transit, cannot be permitted to file notarised photo copies without amending the plaint averments, which is contradictory to the affidavit filed in support of the applications. The learned counsel would submit that most of the documents in Annexures A & B are not new documents though, termed as additional documents they are all documents listed in the annexure in the plaint. Secondary

evidence of these documents cannot be received. Hence, the applications are not maintainable.

5. This Court perused the plaint averments made in the affidavit qua the counter filed by the respondent. The applicant has given inconsistent version regarding the existence of the second original and later it was lost in transit. However, the averment regarding these sale transactions not denied. It is not a disputed fact that the sale transaction was across the border and the goods entered into Indian territory through sea. Documents were presented before customs department for clearing. Neither the plaintiff nor the defendant denied the fact that the original bills regarding the import are in custody of customs department.

6. In the said circumstances, the plaintiff has already disclosed the existence of the documents. Introduction of the secondary evidence, since the original is in possession of Government authority has to be allowed de hors of the inconsistent pleadings pointed out by the learned counsel for the defendant. It is for the Court to appreciate the evidence and arrived at right conclusion in respect of the issue No.2 which reads as below:-

“(ii) Whether the plaintiff has supplied any goods (Coal) to the defendant in terms of the High Seas Sale Agreement dated 21.10.2014 and whether the plaintiff and defendant had entered into such agreement?”

7. For the said purpose, it is essential to look into the relevant documents connected with the HSS agreement, which is the subject matter of the suit. Therefore, these applications are allowed subject to proof and relevancy. In case of any dispute regarding the genuineness of the documents, it is open to the parties to take necessary application for production of the originals from the custody of the Customs department. It is also made clear that the secondary evidence sought to be introduced will be subject to Section 65 of the Evidence Act.

Sd/.DR.G.J.J.

14.02.2020

//Certified to be a true copy//
Dated this the day of 2020.

SU/24.02.2020

COURT OFFICER

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

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