

A.No.1110 of 2020
in
C.S.No.330 of 2018

C.V.KARTHIKEYAN,J.,

This is a case issue in which the application seeking injunction has gone around a full circle.

2. Originally the matter was heard and orders were passed on 13.08.2018 in A.Nos.502, 4609 and 4699 of 2018. Thereafter, an Original Side Appeal had been filed in O.S.A.No.7 of 2019. While disposing of the Original Side Appeal, the Division Bench had stated that the plaintiff, may if they deem fit, file the complete transcription of the web content as on the date of the suit along with appropriate application seeking leave of the Court within a stipulated period of 2 weeks from the date of receipt of a copy of this order.

3. This application has been filed pursuant to such liberty being granted by the Division Bench.

4. The documents filed are containing the plaintiff's 2 CAT IIM question along with affidavit under Section 65 B of the Evidence Act, A Compact Disk containing the plaintiff's 2 IIM CAT questions and also a print out of an E-mail dated 29.10.2019 addressed by the second defendant to the plaintiff.

5. At this juncture while determining whether these documents could be taken on file or not, it may not be appropriate on my part to once again travel into the facts of the case.

6. Let me go the basis, namely the order of the Division Bench wherein liberty was granted to file the documents within a stipulated time.

7. It is stated by the learned counsel for the plaintiff that though the order of the Division Bench is dated 08.11.2019. the Copy Application was filed with a delay of 4 days and thereafter the order copy was made available on 06.02.2020 and received by the plaintiff herein, on 07.02.2020. It is stated that the application had been filed on 11.02.2020. It is therefore contended by the learned counsel for the plaintiff that the application has been filed within ten days though the Division Bench had granted 14 days in filing the application. This mathematical calculation with respect to the dates is challenged by the learned counsel for the defendant who questioned the date of issue of the order copy of the Division Bench.

8. If the application had been filed out of time, then questions to that effect can be raised during cross examination and when documents are actually presented for being marked and to be taken on record. Liberty is granted to raise those objections at the time of marking of the documents.

9. The other objection taken by the learned counsel for the defendant is that, the second document is an E-mail sent by the second respondent to the plaintiff which is dated 29.03.2019 and it is stated that the Division Bench had granted liberty to file only such of those documents existing as on date of the suit and the plaintiff herein has taken undue advantage of the said order.

10. The contention raised by the learned counsel for the defendant that the Division Bench had granted liberty to file documents only relating to the print outs in hard copy and also in the form of a compact disk is correct. But if the

plaintiff seeks further documents to be filed then under the amended Civil Procedure Code Rule 11 Order 5, with leave of the Court documents can be filed if reasons are advanced.

11. The learned counsel for the plaintiff stated that the second document namely E-mail dated 23.09.2020 falls in that category. Again, at the time of marking it is always open to the defendant to question the relevancy of the said document and raise objections for the same being taken on record.

12. A further objection raised by the learned counsel for the defendant is that the order of the Division Bench also stated that there have also to be amended of the plaintiff.

13. The learned counsel for the plaintiff however read the order of the Division Bench in a different manner. Whether the plaint has to be amended or not is the prerogative of the plaintiff.

14. Both sides are permitted to lead the evidence with respect to the relevancy of the documents and the learned counsel for the defendant is given the opportunity to also question admissibility and proof at the time of the trial.

15. With these observations, application is allowed.

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23.09.2020

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