

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

O.S.A.No. 93 of 2020
and C.M.P.No.3825 of 2020

M/s.Renault India Pvt. Ltd.,
37 & 28, Venkatnarayana Road,
ASV Ramana Towers, 4th Floor,
T.Nagar, Chennai - 600 017. ...Appellant

Vs

M/s.Aradhana Distributors Pvt Ltd.,
Through its Director, Mr.Sanjay Kumar Patodia
19, Jawahar Lal Nehru Road,
Kolkata. ...Respondent

Appeal preferred under Order XXXVI Rule 9 of O.S. Rules,
1956 r/w Clause 15 of Letters Patent against the order dated
10.01.2020 made in Application No. 65 of 2020 in C.S.No. 621 of
2016.

For Appellant ... Mr.Mr.Aashish Jain Lunia
for M/s.Surana and Surana

For Respondent ... Mr.A.K.Balaji

JUDGMENT
(Delivered by M.M.SUNDRESH, J.)

This Original Side Appeal is directed against the order
dated 10.01.2020 made in Application No.65 of 2020 in C.S.No.
621 of 2016, whereby the application filed to eschew the
evidence of D.W.1 was dismissed by the learned single Judge.

2.Appellant is the defendant in the suit. The suit has been
filed for recovery of damages. The appellant produced D.W.1 on
his behalf being the employee. The matter has been adjourned

from time to time pursuant to the completion of case management hearing. It appears that the appellant has been taking time for the production of witness. As per the case management hearing, the cross examination to be completed on or before 19.09.2019. In fact, cross examination of P.W.1 was completed and the plaintiff's side evidence was closed.

3. At that stage, the appellant filed an application seeking to eschew the evidence of D.W.1. This application was dismissed by the learned single Judge on the premise that acceding to the request made would result in protracting the proceedings. It has been further held that it is well open to the appellant to treat the evidence as hostile with the leave of the Court and cross examine him. Eschewing testimony recorded already can only be done when the witness is not available or no more.

4. Learned counsel appearing for the appellant submitted that the resignation of D.W.1 has been accepted. There is a possibility that he might depose against the appellant. This would cause injustice and therefore, the evidence let insofar will have to be eschewed.

5. Learned counsel appearing for the respondent/plaintiff submitted that there has been conscious delay at the hands of the appellant notwithstanding the direction given by the learned single Judge during the case management hearing. Time limit fixed has been breached with impunity at the hands of the appellant. In fact, this Court, on the earlier occasion, in O.S.A.No.331 of 2019 dated 17.12.2019, has fixed the outer time limit and even that outer limit has been breached. Hence the appeal will have to be dismissed.

6. We do not find any merit in the appeal filed. Ultimately, the assessment of the evidence is the role assigned to the Court concerned. It is well open to the appellant to explain the circumstances under which the evidence available, adverse to its case, cannot be relied upon. Thus, we do not find any reason to eschew the evidence let in already by D.W.1.

7. In such view of the matter, this Original Side Appeal stands dismissed as we concur with the observation of the learned single Judge that allowing the application will further delay the proceedings. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

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Sub Assistant Registrar

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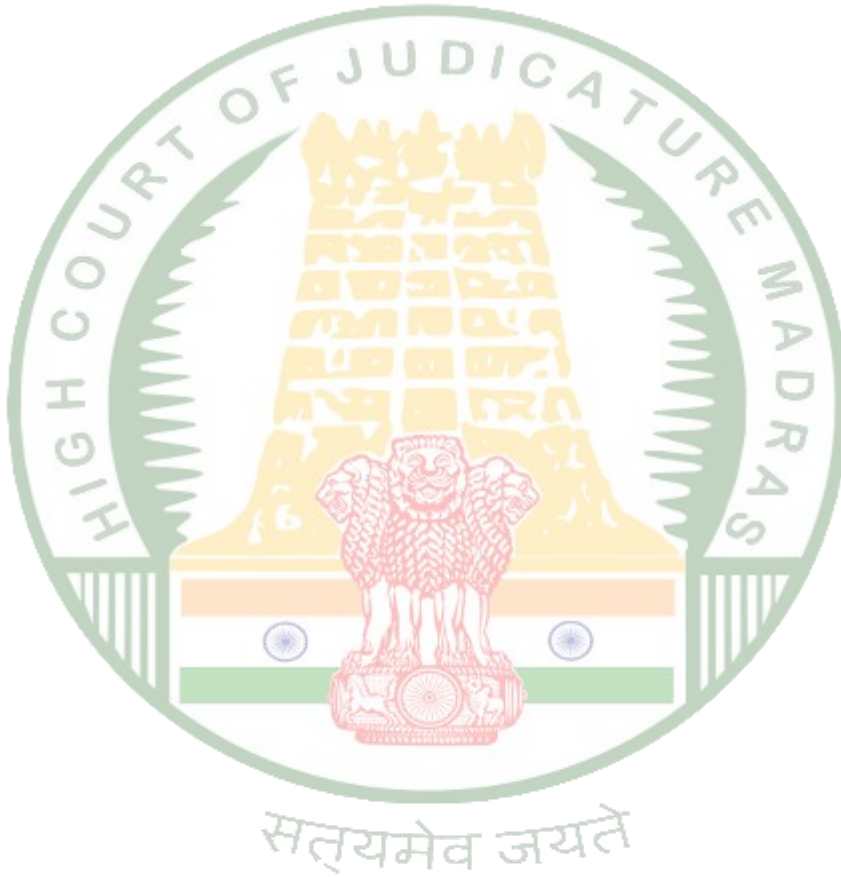
To

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

+1cc to Mr.Surana &Surana , Advocate SR.No. 14132
+1cc to Mr.A.K.Balaji , Advocate SR.No. 14472

O.S.A.No.93 of 2020

A.SK(24/02/2020)



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