

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 10TH DAY OF MARCH 2020

THE HON'BLE MR. JUSTICE M.S.RAMESH

A. No.4603 OF 2019
in
C.S. No.466 of 2013

M/S.ENNOR MUDS AND CHEMICALS
REP.BY PROPRIETOR
MR.N.RAJAGOPAL,
HAVING THEIR REGISTERED OFFICE AT
NO.A-12, ANNA NAGAR (EAST),
CHENNAI-600 102

Applicant/Plaintiff

-VS-

1. M/S.SECURE ENERGY SERVICES INC.,
(FORMERLY KNOWN AS M/S.ALLIANCE
ENERGY SERVICES LMTIED)
REP.BY PRESIDENT AND CEO MR.RENE AMIRAUT,
BOW VALLEY SQUARE 2,
1900, 205 5TH AVE SW,
CALGARY, AB T2P 2V7

4. M/S.ALLIANCE ENERGY SERVICES
LTD. REGISTERED OFFICE AT
3000, 700-9TH AVENUE SW
CALGARY, AB, T2P3V4, ALBERTA,
CANADA.

Respondents/Defendants

Application praying that this Hon'ble Court be pleased to permit the

applicant/plaintiff to produce Share Purchase Agreement dated 26th April

2011, entered into between the respondents and the Holders of the Issued

and Outstanding Shares of Marquis Alliance Energy Group Inc, as

additional document to the plaint.

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

Mr.V.Prakash, learned Senior Counsel appearing on behalf of the applicant/plaintiff would place reliance on Order XI Rule 5 of the Commercial Courts Act and submit that the document, which he seeks to produce before this Court, was not in his possession at the time of filing of the suit.

2. The learned counsel for the respondents/defendants opposed the said contention by stating that at this belated stage, when the affidavit of Admission and Denial as well as the written statement has already been filed, production of documents would cause serious prejudice to the respondents. He would also submit that when the written statement has already been filed, they may not be in a position to defend the present Share Purchase Agreement.

3. When there are no averments in the plaint with regard to the Share Purchase Agreement, dated 26.04.2011, I am unable to appreciate as to how could counter averments be made in the written statement with regard to the Share Purchase Agreement.

4. Order XI Rule 5 prohibits the plaintiff from relying on documents, which were in the plaintiff's possession and which has not been disclosed along with the plaint. However, when the plaintiff establishes a reasonable cause for non- disclosure of such documents along with the plaint, the provision empowers the Court to grant leave for introduction of such documents. The applicant/plaintiff has stated that the Share Purchase Agreement was produced before this Court during the hearing of the applications in A.Nos.6166 and 6167 of 2015 and at that point of time, the plaintiff was made aware of the existence of such an agreement. Admittedly, the applicant/ plaintiff herein is not a party to the document and as such, the reason adduced by the plaintiff that he could not produce the said document along with the plaint, seems to be acceptable.

5. The suit is for recovery of money based on supply of goods through purchase orders. The Share Purchase Agreement, which the plaintiff intends to introduce in the suit, may not only be helpful to the plaintiff to substantiate his case, but would also be of assistance to this Court to decide the issue involved in the suit. As such, this Court is of the view that such a document could be permitted to be produced in the trial.

6. Accordingly, the present application is allowed. Consequently, the applicant/plaintiff is permitted to produce the Share Purchase Agreement,

Sd/.M.S.R.J.

10.03.2020

//Certified to be a true copy//

Dated this the 19 day of June 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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