

11IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 11TH DAY OF MARCH 2020

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

A.NO.8951 OF 2019
IN
C.S.NO.346 OF 2017

ISHA FOUNDATION

Rep.by its Administrator,
Swami Eka, Isha Yoga Centre,
Velliangiri Foothills, Ishana Vihar Post,
Coimbatore-641 114

..Plaintiff

-VS-

SATHIYAM MEDIA VISION PVT.LTD.

Rep.by Mananging Director,
Mr.Issac Livingstone, No.1, Kamaraj Park Street,
Kalmandapam, Royapuram,
Chennai-600 013

..Defendants

A.No.8951 of 2019:

SATHIYAM MEDIA VISION PVT.LTD.

Rep.by Mananging Director,
Mr.Issac Livingstone, No.1, Kamaraj Park Street,
Kalmandapam, Royapuram, Chennai-600 013

..Applicant

-VS-

ISHA FOUNDATION

Rep.by its Administrator,
Swami Eka, Isha Yoga Centre,
Velliangiri Foothills, Ishana Vihar Post,
Coimbatore-641 114

..Respondent

This application praying that this Hon'ble court be pleased to pass an

order condoning the delay of 489 days in filing the list of witnesses in the

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

This application is filed to condone the delay of 489 days in filing the list of witnesses in C.S.No.346 of 2017.

2. I heard the learned counsel for the applicant/defendant and the learned counsel for the respondent/plaintiff.

3. The learned counsel for the applicant submits that issues were settled on or about 03.07.2018 and that, therefore, the list of witnesses should have been filed within 15 days thereafter. However, the applicant could not trace the list of witnesses of the respondent/plaintiff from the case bundle. Therefore, the applicant was under the *bona fide* belief that the respondent/plaintiff did not intend to examine any person other than the plaintiff's Administrator. Subsequently, it was discovered that the respondent/plaintiff had submitted a list of three witnesses along with the affidavit of documents. The delay occurred in these facts and circumstances.

4. In response, the learned counsel for the respondent pointed out that the applicant has included in the list of witnesses, the founder trustee of the respondent/plaintiff and one more trustee as the 25th and 26th witnesses. In order to substantiate the contention that the counter party to the litigation cannot call representatives of the other party to lead evidence in the matter,

(i) Union Bank of India vs. Muthiah (1999)

1 MLJ 679;

(ii) D.Babu vs. K.A.Dinachandran in

C.R.P.(PD) No.3929 of 2012 vide order dated
01.11.2012.

(iii) Namachivayam vs. Anandharaman in

C.R.P.(PD) No.368 of 2011 vide order dated
08.08.2017.

(iv) B.Anitha Kumari vs. S.Ravi in

C.R.P.(PD) No.4214 of 2017 vide order dated
14.03.2018.

5. In addition, he pointed out that no reasons have been provided in the affidavit in support of this application for the inordinate delay in filing the list of witnesses.

6. I considered the submissions of the learned counsel for the respective parties and examined the affidavit and the counter affidavit.

7. In the affidavit, the main reason cited is that the list of witnesses of the respondent/plaintiff could not be traced from the case bundle and that it was discovered subsequently only during the course of recording of evidence. Although this is not a totally convincing explanation, the concept

of sufficient cause is sufficiently wide and should be construed so as to subserve the interest of justice.

8. As regards the objections with regard to the 25th and 26th witnesses in the list of witnesses, the applicant/defendant is, in any case, required to file an appropriate application in order to call them as witnesses either to depose or to produce documents. At such time, it is always open to the respondent/plaintiff to raise objections with regard to the summoning of such persons. The objections, in this regard, at this stage are also recorded.

9. Accordingly, this application is allowed subject to the aforesaid observations and the delay of 489 days is condoned.

Sd/.S.K.R.J.

11.03.2020

//Certified to be a true copy//

Dated this the day of 2020.

सत्यमेव जयते

su.17.03.2020

COURT OFFICER(O.S.)

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