

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 23RD DAY OF JANUARY 2020

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

A.Nos.9688 and 9689 of 2019

IN

C.S.No.466 OF 2015

M/s. East Coast Constructions Ltd.,
Rep.by its Director Mr.S.A.Mohammed Mohideen
having its Regd Office at: Bukharia Buildings
No.4, Moores Road, Chennai 600 006. :Plaintiff

Vs

M/s. Sri Balaji Educational and Charitable Public Trust
(Regd.,)
Represented by its Chairman-Managing Trustee
Mr.M.K.Rajagopalan
Mahatma Gandhi Medical College Complex
Pondy - Cuddalore Main Road,
Pillaiyarkuppam, Pondicherry 607 402.

Also having Office at:

No.3A, 3rd Floor, Jai Durga Complex
New No.60, 1st Avenue,
Ashok Nagar, Chennai 600 083. :Defendant

A.Nos.9688 and 9689 of 2019:

M/s. Sri Balaji Educational and Charitable Public Trust
(Regd.,)
Rep. by its Chairman-Managing Trustee
Mr.M.K.Rajagopalan
Mahatma Gandhi Medical College Complex
Pondy - Cuddalore Main Road,
Pillaiyarkuppam, Pondicherry 607 402.

Also having Office at:

No.3A, 3rd Floor, Jai Durga Complex
New No.60, 1st Avenue,
Ashok Nagar, Chennai 600 083. :Applicant/Defendant

M/s. East Coast Constructions Ltd.,
 rep. by its Director Mr.S.A.Mohammed Mohideen
 having its Regd. Office at "Bukharia Buildings"
 No.4, Moores Road, Chennai 600 006. :Respondent/Plaintiff

A.No.9688 of 2019

Application praying that this Hon'ble Court be pleased to allowed to file the additional documents mentioned in the Judges Summons.

A.No.9689 of 2019

Application praying that this Hon'ble Court be pleased to reopen the side of Applicant/Defendant which was closed on 19/06/2019 and recall DW1 to permit to mark the Additional Document as per the list mentioned in the Judges Summons and receive the said list mentioned document on the file of the C.S.No.466 of 2015.

These Applications coming on this day before this Court for hearing, the Court made the following order:

After completion of examining the witnesses on either side, these application are filed to reopen and recall and mark the additional document viz., a letter dated 18.11.2019 issued by the Technicalliya Consultants Private Limited inclosing Special Conditions of contract/standard condition.

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2. According to the applicant/defendant, this document is very crucial and vital and necessary to establish the defence. It is stated in their affidavit that the said document was obtained from Technicaliya Consultants Private Limited only on 16.11.2019 through e-mail and therefore, the same could not be produced earlier.

3. The learned counsel appearing for the applicant/defendant would submit that Clauses in the said special conditions of contract will establish that the plaintiff has no cause of action to claim the amount as detailed in the plaint and therefore, the document is very vital.

4. This application is stoutly opposed by the plaintiff on the ground that just to fillup the lacuna and protract the proceedings, the present applicants are filed. The plaintiff is not privy to the alleged special conditions of contract and any Clause found in the said contract has no binding effect on the plaintiff. Furthermore, it is also submitted by the learned counsel appearing for the plaintiff that under the Commercial Courts Act, belated introduction of document without disclosing the existence at the earliest instant cannot be entertained.

5. To buttress the above submission, the plaintiff has relied on the judgment of Hon'ble Supreme Court rendered in **Nitin Gupta v. Texmaco Infrastructure and Holding Limited dated 29th April 2019.**

6. It is no more *res integra* that the document known to the parties has to be pleaded and listed at the time of filing the plaint or written statement as the case may be and only in the exceptional case, new document can be

introduced and accepted, if a reasonable cause is made for belated filing of the new document. Furthermore, as pointed out by the learned counsel appearing for the plaintiff when the plaintiff is not a signatory to the said contract, the Clauses in the said contract will have no binding effect either on the plaintiff or in the suit. Hence, these applications are dismissed.

Post the suit on 14.02.2020 for argument.

Sd./-G.J.J

23.01.2020

//Certified to be true copy//

Dated at Madras this the day of 2020.

JJ 28/01/2020

COURT OFFICER(O.S.)

From 25th day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

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