

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 19TH DAY OF APRIL 2021

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A.No.596 of 2021
in
C.S.No.127 of 2005

The Board of Trustees of the Port of
Chennai, represented by its Chairman,
Rajaji Salai, Chennai - 1

...Applicant/Plaintiff

Vs

M/s.T.N.S.S.Steels Pvt.Limited,
Rep.by its Managing Director,
No.8, Rathinasabapathy Street,
Thondiarpet, Chennai - 600021

...Respondent/Defendant

This application praying that this Hon'ble court be pleased to eschew
the proof affidavit dated 23/02/2017 and the chief examination taken on
23/02/2017 in C.S.No.127 of 2005.

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

This application has been filed by the plaintiff in C.S.No.127 of 2005
seeking to eschew the evidence of PW1 on the ground that PW1 has retired
from service.

2. The suit was posted for evidence and proof affidavit of PW1 was filed in the month of February 2017. It is seen that P.W.1 deposed before the learned Additional Master and certain documents were marked on 23.02.2017. It is at that stage, the defendant served the notice under Order XI Rule 19 of the Code of Civil Procedure calling upon the plaintiff to produced nine documents. The plaintiff produced some of the documents that were sought for. Since the learned Additional Master insisted on an application for production of documents, the application in A.No.5670 of 2017 came to be filed and the same was allowed on 06.10.2020. It is stated that during the interregnum the witness viz., M.Girija, who deposed as P.W.1 retired and is not willing to appear before the court to continue evidence. Under these circumstances, the plaintiff filed this application to eschew the evidence of P.W.1 and permit the plaintiff to examine any other witness.

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3. This is opposed by Mr.R.N.Amarnath, learned counsel appearing for the respondent that once the evidence recorded cannot be eschewed.

4. I do not think that the contention of the counsel can be taken as absolute proposition, there are always exemptions. From the proceedings it

could be culled out that P.W.1 has filed her proof affidavit, which is nothing but a re-production of plaint in first person and certain documents have been marked. No cross-examination has been done, no admission has been extracted from P.W.1 which could be favourable to the defendant in future.

5. I therefore do not think that the defendant's right to defend the suit would be anyway affected by eschewing the evidence of P.W.1 and allowing the plaintiff to examine some other witness as P.W.1. Hence, this application is allowed and the evidence of P.W.1 on record is eschewed.

6. The plaintiff is permitted to file fresh proof affidavit through any other witness who has longer tenure of service so that he could be cross examined effectively by the counsel for the defendant.

Sd/.R.S.M.J.

19.04.2021

//Certified to be a true copy//

Dated this the th day of 2021

SU/22.04.2021

COURT OFFICER(O.S.)

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