IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 26TH DAY OF MARCH 2021

THE HON'BLE MS. JUSTICE P.T.ASHA

A.Nos. 798, 799, 802, 803, 805 and 807 of 2019

in C.S.No.86 OF 2004

Mr.Vijay Nahar
residing at
New No.26,Hadows Road,
Vandana Towers (6A),
Chennai -600 006. ... Plaintiff / Applicant in all the Applications

-Versus-

1.Mr.Anil Nahar
residing at
No.15 & 15 A,
Kannadasan Road,
T.Nagar, Chennai – 17

2.M/s.Transworld Exports (P) Ltd.
Rep.by its Director Mr.Anil Nahar,
15-A, New No.21,
Kannadasan Road,
T.Nagar, Chennai – 17 ...Defendants / Respondents in all the Applications

A.No. 798 of 2019:-

Application praying that this Hon'ble Court be pleased to RE-OPEN the evidence of plaintiff in C.S.No.86 of 2004.

A.No. 799 of 2019:-

Application praying that this Hon'ble Court be pleased to permit the plaintiff to file two additional documents, being the Report of

Mr.M.Maninmani Rajan, Assistant Director (Retired), Forensic Sciences Department dated 16.12.2018 and 27.12.2018.

A.No. 802 of 2019:-

Application praying that this Hon'ble Court be pleased to direct the defendants/respondents to produce the originals of the following documents:

Ex.D.2- Being the returns filed by the 2nd defendant Company which was signed by my father, besides, D-6, D-41 and D-42 - being the returns filed by the 2nd defendant Company with the Registrar of Companies, for comparison with Exhibits D-19, D-48, D-55, D-56, D-57 and D-58.

A.No. 803 of 2019:-

Application praying that this Hon'ble Court be pleased to direct the defendants to produce the books containing the minutes of the Annual General Body Meeting of the 2nd defendant for the period from 28.10.1995 to 30.09.2014 and 31.03.1995 to 22.12.2014 marked as Exhibits D-52, D-53 and D-54.

A.No. 805 of 2019:-

Application praying that this Hon'ble Court be pleased to

DIRECT examination of the papers contained in Exhibits D-52, D-53 and D-54 by an Expert appointed by this Court to ascertain the age of the sheets and the writing thereon pertaining to the entries under which transfer of shares owned by Mr.D.C.Nahar in favour of the family members of the 1st defendant were entered.

A.No. 807 of 2019:-

Application praying that this Hon'ble Court be pleased to issue subpoena to the Manager, Vijaya Bank, Triplicane Branch, Chennai, to produce all records in relation to the Savings Bank Account/Current Account of the 2nd defendant having PAN No.47 - 041 -CN - 0765 (Circle II (2) - GIR No.35/1), more specifically the signature of Late D.C.Nahar as available in their records for being compared with the disputed signatures in Exhibits D-19, D-48, D-55, D-56, D-57 and D-58 filed before this Court.

These applications having been heard on 21.02.2021 in the presence of Ms. Chitra Sampath, Senior Counsel for M/s.V.G. Suresh Kumar, Advocates for the applicant in all applications and Mr.P.H.Aravind Pandian, Senior Counsel for Mr.R.Vishnu, Advocates for the respondents in all applications and upon reading the judge's summons and the affidavit of Vijay Nahar filed in A.Nos. 798, 799, 802, 803, 805 and 807 of 2019 and having stood over for consideration till this date and coming on this date before this court for orders in the presence of said advocates for the parties hereto and this court having observed that the plaintiff has been able to obtain the certified copies of the documents from the Registrar of Companies in the year 2004 which clearly shows that he has conducted a search of the documents relating to the 2nd defendant Company, the plaintiff cannot at this stage re-open the entire evidence and start the suit afresh to fill up his omissions and lacunae and try to undo the admissions that the defendants have got during the cross examination of the plaintiff, the plaintiff is insisting on these applications being ordered only on the ground that some documents have been produced only during the trial, however, the plaintiff had knowledge about these documents even prior to the filing of the suit, therefore, it is not documents which have thrown a surprise to the plaintiff, and there is no merits in these applications, <u>it is ordered as follows:-</u>

That there A.Nos. 798, 799, 802, 803, 805 and 807 of 2019, be and are hereby dismissed.

2) That the suit in C.S.No. 86 of 2004 be posted on 15.04.2021.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 26TH DAY OF MARCH 2021.

Sd/-

ASSISTANT REGISTRAR(O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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

EVK
13/07/2021

A.Nos. 798, 799, 802, 803, 805 and 807 of 2019
in C.S.No.86 OF 2004

ORDER

DATED: 26.03.2021

THE HON'BLE MS. JUSTICE P.T.ASHA

FOR APPROVAL: 13/07/2021

APPROVED ON: 15/07/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.02.2021

Delivered on : 26.03.2021

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.Nos.798, 799, 802, 803, 805 and 807 of 2019
in C.S.No.86 of 2004

C.S.No.86 of 2004:

Vijay Nahar ...Plaintiff

-V-

1.Anil Nahar

2.M/s.Trans World Export (P) Limited
rep. by its Director,
Mr.Anil Nahar,
New No.21, Kannadasan Road,
T. Nagar,
Chennai - 600 017. ...Defendants

A.Nos.798, 799, 802, 803, 805 and 807 of 2019:

Vijay Nahar ...Petitioner in all

applications

-V-

1.Anil Nahar

2.M/s.Trans World Export (P) Limited
rep. by its Director,
Mr.Anil Nahar,
New No.21, Kannadasan Road,
T. Nagar,
Chennai - 600 017. ...Respondents
in all

applications

Prayer in C.S.No.86 of 2004: Civil Suit filed under Order IV Rule 1 and Order XXIV of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure praying for declaration declaring the plaintiff's half share in the suit schedule properties, for appointing a Commissioner for division of the properties and allot half share in th suit schedule properties by metes and bound, for an injunction restraining the defendant, their men, agents, assignees from encumbering or alienating the suit schedule properties, for appointing an Advocate Commissioner to ascertain the mean profits in respect of the suit schedule properties and direct the 1st respondent to render accounts of the same and direct payment of such sum ascertained towards mean profits to the plaintiff for three years from the date of filing of the suit with costs.

Prayer in A.No.798 of 2019: Judge's Summons filed under Order XIV Rule 8 of the High Court Original Side Rules read with Section 151 of the Code of Civil Procedure praying to re-open the evidence of plaintiff in C.S.No.86 of 2004.

<u>Prayer in A.No.799 of 2019</u>: Judge's Summons filed under Order XIV Rule 8 of the High Court Original Side Rules read with Order VII Rule 14(3) and Section 151 of the Code of Civil Procedure praying to permit the plaintiff to file two additional documents, being the Report of Mr.M.Maninmani dated 16.12.2018 and 27.12.2018.

<u>Prayer in A.No.802 of 2019</u>: Judge's Summons filed under Order XIV Rule 8 of the High Court Original Side Rules read with Order XI Rule 14(3) and Section 151 of the Code of Civil Procedure praying to direct the defendants/respondents to produce the originals of the following documents, namely, (1)Ex.D.2-Being the returns filed by the 2nd defendant Company which was signed by my father, besides, D-6, D-41 and D-42 - being the returns filed by the 2nd defendant Company with the Registrar of Companies for comparison with Ex.D.19, Ex.D.48, Ex.D.55, Ex.D.56, Ex.D.57 and Ex.D.58.

<u>Prayer in A.No.803 of 2019</u>: Judge's Summons filed under Order XIV Rule 8 of the High Court Original Side Rules read with Order XI Rule 14 and Section 151 of the Code of Civil Procedure praying to direct the defendants to produce the books containing the minutes of the Annual General Body Meeting of the 2nd defendant for the period from 28.10.1995 to 30.09.2014 and 31.03.1995 to 22.12.2014 marked as Ex.D.52, Ex.D.53 and Ex.D.54.

Prayer in A.No.805 of 2019: Judge's Summons filed under Order XIV Rule 8 of the High Court Original Side Rules read with Order XXVI Rule 10A and Section 151 of the Code of Civil Procedure praying to direct examination of the papers contained to Ex.D.52, Ex.D.53 and Ex.D.54 by an Expert appointed by this Court to ascertain the age of the sheets and the writing thereon pertaining to the entries under which transfer of shares owned by Mr.D.C.Nahar in favour of the family members of the 1st defendant were entered.

Prayer in A.No.807 of 2019: Judge's Summons filed under Order XIV Rule 8 and Order XVI Rule 1 of the High Court Original Side Rules read with Order XVI Rule 1 and Section 151 of the Code of Civil Procedure praying to issue subpoena to the Manager, Vijaya Bank, Triplicane Branch, Chennai, to produce all records in relation to the Savings Bank Account/Current Account of the 2nd defendant having PAN No.47 - 041 -CN - 0765 (Circle II (2) - GIR No.35/1), more specifically the signature of Late D.C.Nahar as available in their records for being compared with the disputed signatures in Exhibits D.19, Ex.D48, Ex.D.55, Ex.D-56, Ex.D.57 and Ex.D.58 filed before this Court.

For Applicant : Ms.Chitra Sampath

Senior Counsel
for M/s.V.G. Suresh Kumar
in all applications

For Respondents : Mr.P.H.Aravind Pandian
Senior Counsel
assisted by Mr.R.Vishnu
in all applications

COMMON ORDER

The parties are referred to in the same array as in the suit. The plaintiff in a suit for Partition has taken out the following applications:

"**(a)A.No.798 of 2019**: To re-open the evidence of plaintiff in C.S.No.86 of 2004.

(b)A.No.799 of 2019: To permit the plaintiff to file two additional documents, being the Report of Mr.M.Maninmani dated 16.12.2018 and 27.12.2018.

(c)A.No.802 of 2019: To direct the defendants/respondents to produce the originals of the following documents, namely, (1)Ex.D.2-Being the returns filed by the 2nd defendant Company and signed by Late D.C. Nahar, besides, D-6, D-41 and D-42 - being the returns filed by the 2nd defendant Company with the Registrar of Companies for comparison of the signature contained thereon with Ex.D.19, Ex.D.48, Ex.D.55, Ex.D.56, Ex.D.57 and Ex.D.58.

(d)A.No.803 of 2019: To direct the defendants to produce the books containing the minutes of the Annual General Body Meeting of the 2nd defendant for the period from 28.10.1995 to 30.09.2014 and 31.03.1995 to 22.12.2014 marked as Ex.D.52, Ex.D.53 and Ex.D.54.

(e)A.No.805 of 2019: To direct examination of the papers contained to Ex.D.52, Ex.D.53 and Ex.D.54 by an Expert appointed by this Court to ascertain the age of the sheets and the writing thereon pertaining to the entries under which transfer of shares owned by Late.D.C.Nahar in favour of the family members of the 1st defendant were entered.

and

(f)A.No.807 of 2019: To issue subpoena to the Manager, Vijaya Bank, Triplicane Branch, Chennai, to produce all records in relation to the Savings Bank Account/Current Account of the 2nd defendant having PAN No.47 - 041 -CN - 0765 (Circle II (2) - GIR No.35/1), more specifically the signature of Late

D.C.Nahar as available in their records for being compared with the disputed signatures in Exhibits D.19, Ex.D48, Ex.D.55, Ex.D-56, Ex.D.57 and Ex.D.58 filed before this Court."

2.It is necessary to briefly allude to the facts preceeding the filing of these applications.

3.The plaintiff had filed C.S.No.86 of 2004 for declaring his 1/2 share in the suit schedule properties and for appointment of an Advocate Commissioner to divide the same by metes and bounds and to allot his 1/2 share. The plaintiff has also sought for injunction, restraining the defendants from alienating or encumbering the suit schedule properties. The plaintiff and the 1st defendant are brothers and the sons of Late D.C.Nahar.

4.The suit schedule properties consisted of the "A" schedule and the "B" schedule properties. "A" schedule consisted of three immovable properties and "B" schedule consists of a property situate at Jodhpur, Rajasthan and the share which stood in the name of D.C.Nahar in the 2nd defendant Company as on 11.01.2000 and the Death Insurance of D.C.Nahar with LIC.

5.It is the case of the plaintiff that the schedule mentioned properties, namely, Items 1 and 2 though purchased in the name of the 2nd defendant Company, was actually the properties of the plaintiff, the 1st defendant and their deceased father D.C.Nahar who constituted a joint family. The plaintiff's case is that the 2nd defendant Company is a family business though it was started as a separate Unit. Apart from the 2nd defendant Company, the father was also carrying on subsidiary businesses in various names.

6.The plaintiff would contend that for the convenience of the family and on the request of his father, the plaintiff had retired from the Directorship of the 2nd defendant Company on 04.12.1977. The 1st defendant was inducted as a Director with effect from 12.10.1977. Since his father was running the business there was absolutely no conflict of interest and therefore, the plaintiff had not felt the need to ask of the accounts and profits.

7.The plaintiff's father died on 11.01.2000 and after the death of the father, the 1st defendant started to exercise control over not only the assets but also of the others. This resulted in the second wife of the father, one Sreelatha instituting proceedings before the Company Law Board against the defendants herein. There were also proceedings before the City Civil Court between the 1st respondent and Sreelatha.

Ultimately, the 1st defendant had paid a substantial sum of money to Sreelatha for settlement of her shares. It is the contention of the plaintiff that after the death of the father, the 1st defendant with a malafide intention had manipulated the accounts and records of the Company and had also hyphothecated the assets including the immovable properties for his personal business requirements. Since the plaintiff did not have any reason to suspect the bonafides of his brother, the 1st defendant, he had not investigated or made enquiries into these allegations made by Sreelatha. The 1st defendant had not denied the rights of the plaintiff to the properties in question. However, on 25.02.2003, when he had called upon the 1st defendant to partition the properties the defendants had sent a reply dated 22.03.2003 stating that the property of the father had been dealt with by him exclusively and that his father had developed an illicit relationship with one Sreelatha and was living separately with the said Sreelatha. The 1st defendant had further stated that some properties were sold by the D.C.Nahar himself. The 1st defendant had agreed to partition the properties at Jodhpur and East Coast Road which is the Item 1 of the "B" Schedule property and the Item 3 of the "A" schedule properties. As regards the Items 1 and 2 of the "A" schedule property, the 1st defendant had contended that the same belonged to the 2nd defendant Company and therefore, was not available for Partition. This reply has therefore given the plaintiff the cause of action for filing the suit.

8.A detailed Written Statement has been filed by the 1st defendant *inter alia* contending that the family consisting of D.C.Nahar and his sons, i.e., the plaintiff and the 1st defendant herein possessed only movable properties in the form of cash and jewels. These movables were partitioned and the plaintiff has received his share in the year 1977 itself. The plaintiff had in fact executed an affidavit dated 02.12.1977 confirming his severance of title with the joint family consisting of himself, his father and the 1st defendant. He had also acknowledged that he has no right, title, claim or interest in the joint family thereafter. By a Release Deed dated 29.11.1977, he had also relinquished his interest in the business in the name and style of "Novelty Export". The father had executed two Wills dated 27.04.1983 and 26.12.1990, in which he has clearly set out the severance of status of the plaintiff from the joint family. The two Wills however appeared to have been revoked later by D.C.Nahar. The defendants would contend that the Items 1 and 2 of the A schedule property are the properties of the Company and not a joint family property and is therefore not available for the partition.

9.As regards the Item 3 of the "A" schedule property and the Item 1 of the "B" schedule property, the same is available for partition and the defendants have no objection to its partition. With reference to Item 2 of the "B" schedule property, the shares stand in the name of Late D.C. Nahar in the 2nd defendant Company, the defendant would submit that D.C.Nahar had transferred the shares in the name of Sreelatha who had initiated proceedings before the Company Law Board and in the compromise that had taken place before the Company Law Board, the 1st defendant and his wife had purchased the shares standing in the name of Sreelatha and have therefore become the owners of those shares. There is no share of D.C.Nahar available for partition. The defendant had filed 40 documents along with the Written Statement which had been filed in the month of April 2004.

10.The trial in the matter had concluded on 03.11.20214 and the suit was listed for arguments. After taking several adjournments, the plaintiff has come forward with these applications.

11.In the Common Affidavit filed in support of the applications, the plaintiff would contend that 11250 shares out of 45,000 shares as held by D.C.Nahar has been transferred in the name of the 1st defendant's wife and children just three weeks before the death of D.C. Nahar in December 1999. These documents were produced only during the examination of D.W.1. Thereafter, the matter has been posted for arguments. It is the case of the plaintiff that the documents under which the shares of D.C.Nahar has been transferred to the 1st defendant's wife and children and one Sreelatha are forged. The plaintiff would also contend that Ex.D.19, Ex.D.48, Ex.D.55 and Ex.D.56 are also forged. That apart, interpolations have also been made in the books of the Company. The plaintiff would contend that he had engaged a Forensic Expert to compare the signatures and this expert has opined that the signatures of D.C.Nahar in the documents are forged. The plaintiff did not have the opportunity to examine these documents as it was produced only at the time of D.W.1's evidence. Therefore, he is compelled to file these applications to check the genuineness of the signature of Late D.C.Nahar in these documents with his admitted signatures.

12.The defendants have filed a Common Counter to all these application *inter alia* contending that the applications are highly belated and filed at a time when the suit is posted for arguments. The 1st defendant would contend that these documents had been filed as early as in the year 2004 along with the Written Statement the plaintiff is well aware about the purchase of the shares by the 1st defendant who had purchased the shares of Sreelatha by a Settlement arrived at before the Company Law Board. As regards the Annual Reports of the 2nd defendant Company, the plaintiff has himself filed Ex.P.3 to Ex.P.5 which pre-supposes that the plaintiff is in possession of the rest and has made the claim suppressing the above.

13.Even in the Plaint, the plaintiff was aware of the transfer of shares in the name of wife of the 1st defendant herein. In fact, it is also the case of the defendants that the plaintiff had obtained Ex.P.1, Ex.P.3 to Ex.P.5, the Annual Reports of the 2nd respondent Company for the year ending 31.03.1998, 31.03.2000 and 31.03.2002 as early as in the year 2004 itself. This fact is evidenced on a mere perusal of the documents which clearly shows that they have been obtained by the plaintiff in the year 2004, just prior to the filing of the suit. Therefore, after nearly more than a decade, the plaintiff has come forward with these application. The same is hopelessly barred by limitation. If the plaintiff had doubts about the veracity of the signature of Late D.C.Nahar these documents could have been called for by the plaintiff immediately after the filing of the Written Statement in April 2004 itself. The defendants would further contend that these applications are totally misconceived highly belated and without merits and without any basis.

14.Ms.Chitra Sampath, learned Senior counsel appearing on behalf of the plaintiff would highlight the admissions of D.W.1 during the cross examination relating to Ex.D.19, Ex.D.55 and Ex.D.56. She would submit that in view of these admissions, the veracity of those documents should necessarily be examined. She would further submit that no prejudice is going to be caused to the defendants if the application is ordered. She would submit that it is necessary to bring out the fact that the documents in question does not contain the signature of D.C.Nahar since the documents relating to the transfer of shares in favour of the 1st defendant's wife and children have been produced before the Court during the evidence and therefore, they should be given an opportunity to make their submissions on the same.

15.Per contra, Mr.P.H.Aravind Pandian, learned Senior Counsel appearing on behalf of the defendants would submit that these applications are nothing but an abuse of process of Court. The documents which are now sought to be sent for the expert's opinion have been filed along with the Written Statement as early as in the year

2004. There are other documents which are contained not only in the Written Statement but also in the Plaint. The plaintiff has neither taken any steps whatsoever to direct the defendants to produce the documents nor taken out any application for having the signatures cross checked. Even in the year 2004, the plaintiff was very much in possession of the certified copies of the Annual Reports of the 2nd respondent which is clearly evident when considering the date on which the certified copies of these documents have been obtained. He would submit that the only attempt of the plaintiff is to protract the proceedings and to harass the defendant. Evidence in this matter had closed on 04.10.2017 and the matter posted for arguments at this stage the applications are filed with an intent to fill up the omissions and undo the admissions obtained by the plaintiff.

16.In support of the arguments, he would rely upon the Judgments of the Hon'ble Supreme Court reported **in (2013) 14 SCC 1 [Bagai Constructions v. Gupta Building Material Store].**

17.Heard the learned Senior Counsels appearing on either side and perused the papers.

18.A reading of the Plaint would show that the suit is for a Partition with respect to four immovable properties, shares of

D.C.Nahar in the 2nd respondent Company on the date of his death and the LIC Policy which stands in the name of D.C.Nahar. It is the admitted case of the plaintiff that Items 1 and 2 are purchased in the name of the Company. The plaintiff has also stated that their father had transferred his shares in favour of one Sreelatha from whom the shares had been purchased by the 1st defendant and his wife. These admitted facts have been made on 30.01.2004 itself. The plaintiff is also aware about the proceedings before the Company Law Board which has ultimately culminated in the purchase of the shares by the 1st defendant from Sreelatha. It is also evident that the plaintiff has applied to the Registrar of Companies for details even prior to the filing of the suit. Therefore, he was fully aware about the share holding of the 2nd respondent Company. That being so, the plaintiff has not questioned the transfer of the shares in favour of the children of the 1st defendant by D.C.Nahar in his Plaint. Despite being aware about the number of shares held by D.C.Nahar, the plaintiff has chosen to remain vague in his pleadings. If the plaintiff was in doubt regarding the execution of these documents by his father D.C.Nahar he could have called for the production of originals from the defendants even prior to the filing of the suit or at least after the Written Statement was filed. That apart, along with the Written Statement, the defendant has also filed certified copies and original copies of the various documents and it was well open to the plaintiff to have taken these steps even prior to the trial commencing in the suit. The filing of these applications at this late stage in the proceedings apart from being highly belated is also an attempt to fill up the lacunae and allow the plaintiff to clarify the admissions made by him during his cross examination and to fill up the omissions.

19.The contention of the plaintiff is that the documents came to his knowledge only after the cross examination of D.W.1. Such a statement from the records appears to be false. That apart, the present application is filed nearly two years after the conclusion of the evidence and the posting of the matter before Court. It is to be taken note here that the plaintiff had not objected to the marking of any of these documents.

20.A.No.798 of 2019 has been filed to re-open the evidence of the plaintiff invoking the provision of Section 151 of the Code of Civil Procedure and not under the provisions of Order 18 Rule 17 of the Code of Civil Procedure.

21.The Hon'ble Supreme Court in the Judgment reported in **(2011) 11 SCC 275 [K.K.Velusamy v. N.Palanisamy]** had occasion to consider an application filed under Order 18 Rule 17 read with Section 151 of the Code of Civil Procedure. In paragraphs 9 and 10 of the said Judgment, they have stated as follows:

> *8. Order 18 Rule 17 of the Code enables the court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. [Vide Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate - 2009 (4) SCC 410].*

10.Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in- chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo moto, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions."

22.It is to be noted that prior to the Code of Civil Procedure (amended Act of 1999), Rule 17A of Order 18 of the Code of Civil Procedure permitted production of evidence not previously known or which could not be produced despite due diligence. However, this provision caused unnecessary protraction of the litigation. The amendment Act of 1999 omitted this provision and retained Rule 17 alone which reads as follows:

"Order 18 Rule 17 of the Code of Civil

Procedure enables the Court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit."

23.In the Judgment in K.K.Velusamy's case, the learned Judges had in Paragraph 12 concisely stated the principles of Section 151 of the Code of Civil Procedure after analysing various Judgments of this Court.

"(a)Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is `right' and undo what is `wrong', that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, section 151 recognizes and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal

with such situation or aspect, if the ends of justice warrant it. The breadth of such power is co-extensive with the need to exercise such power on the facts and circumstances.

(c) A Court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or necessary implication exhaust the scope of the power of the court or the jurisdiction that may exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of

those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the Legislature.

(e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and the facts and circumstances of the case. The absence of an express provision in the code and the recognition and saving of the inherent power of a court, should not however be treated as a carte blanche to grant any relief.

(f) The power under section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court."

24.Therefore, from the above, it is very clear that though

Section 151 gives a discretionary power inherent in every Court, however, such discretion has to be exercised with caution and used with circumspection. The provisions cannot be used to abuse the process of Court. The document that the applicant seeks to file is the Forensic Reports of an independent Expert. This Report is got after the trial in the suit had been concluded and when the suit was posted for arguments. The applicant was very much aware about the transfer of the shares in favour of the 1st defendant and his family members. In fact, the documents under which the 1st defendant and his wife had purchased the shares was filed along with the Written Statement. It was very well open to the plaintiff to have undertaken this exercise even prior to the commencement of the trial. The prayer contained in A.Nos.802, 803, 805 and 807 of 2019 is once again highly belated, particularly, when the plaintiff was aware of these documents even prior to the filing of the suit. This is obvious from account of the fact that the plaintiff has been able to obtain the certified copies of the documents from the Registrar of Companies in the year 2004 which clearly shows that he has conducted a search of the documents relating to the 2nd defendant Company. The plaintiff cannot at this stage re-open the entire evidence and start the suit afresh to fill up his omissions and lacunae and try to undo the admissions that the defendants have got during the cross examination of the plaintiff. The plaintiff is insisting on these applications being ordered only on the ground that some documents have been produced only during the trial. However, the plaintiff had knowledge about these documents even prior to the filing of the suit. Therefore, it is not documents which have thrown a surprise to the plaintiff.

25.In the Judgment cited by the defendants, the Hon'ble Supreme Court had deprecated filing of applications at the eleventh hour. The learned Judges who approved the Judgment in K.K.Velusamy supra has held as follows:

> *"This Court has repeatedly held that Courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons,those applications are to be*

considered. We are satisfied that the plaintiff has filed those two applications before the trial Court in order to overcome the lacunae n the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case."

In the instant case, no compelling or acceptable reasons have been placed before me.

In the light of the above Judgment and the facts of the instant case, there is no merits in these applications filed and consequently, these applications are dismissed.

In the light of the orders passed in these applications, post this C.S.No.86 of 2004 on 15.04.2021.

Sd./-P.T.A.J.

26/03/2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)