

A.No.477 of 2021
in
C.S.No.144 of 2015

P.RAJAMANICKAM, J.

This application has been filed by the plaintiff under Order XIV Rule 8 of O.S. Rules r/w Section 151 of CPC, to permit him to mark the Plaintiff Doc.Nos.2 and 8 as exhibits on his side.

2. The learned counsel for the applicant/plaintiff has submitted that along with the plaint, nine documents were filed and at the time of marking the said documents as exhibits through PW1, the learned counsel for the defendant raised objections for marking the said documents as exhibits and hence, the learned Additional Master No.IV has referred the matter to the Court for passing further orders. He further submitted that the Plaintiff Doc.No.2 is the receipt executed by one A.Seetharaman and his wife S.Raja Rajeswari acknowledging the

receipt of Rs.1,60,00,000/- from the applicant, in which, the respondent has signed as witness.

3. He further submitted that since the said document has been executed in a Non Judicial Stamp Paper to the value of Rs.100, the respondent cannot raise any objection for marking the said document as exhibit. He further submitted that already the applicant has filed a complaint under Section 138 of the Negotiable Instruments Act, against the respondent herein on the file of the XX1 Metropolitan Magistrate, Saidapet and the complaint was taken on file in C.C.No.818 of 2018 and in order to prove the same, the applicant has filed a copy of the said complaint as Plaint Doc.No.8 and as such, the respondent cannot have any objection for marking the Plaint Documents as exhibits and therefore, he prayed to allow this application.

4. Per contra, the learned counsel for the respondent/defendant has submitted that the Plaint Doc.No.2 has no

date to show on which date the said document was executed. Further the mode of payment also not mentioned in the said document. He further submitted that according to the applicant, one A.Seetharaman and his wife Raja Rajeswari borrowed the amount from the applicant and for the said loan, the respondent stood as guarantor, but in the Complaint Doc.No.2, it is stated that the respondent has signed as witness and as such, the said document is not relevant for this case.

5. The learned counsel for the respondent/defendant has further submitted that insofar as the Complaint Doc.No.8 is concerned, the said document is a copy of the complaint said to have been filed by the applicant against the respondent under Section 138 of the Negotiable Instruments Act, but in the said complaint, no case number has been given. He further submitted that though in the affidavit filed in support of this application, the applicant has stated that the said complaint was taken on file as C.C.No.818 of 2018, but he has not stated that the said case is pending before which Court. He further submitted that so far the

respondent has not received any summons from any Court with regard to the said criminal case, as such, the said document also is not relevant to this case and therefore, he prayed to dismiss this application.

6. At this juncture, it would be relevant to refer to the judgment in ***Bipin Shantilal Panchal Vs. State of Gujarat and Another, 2001 (3) SCC (1)***, wherein a three Judge Bench of the Hon'ble Supreme Court has observed as follows:-

“It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fall out of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or revisional court, when the same question is re-

canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings.

When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such

objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the judge or magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.) The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties

to the litigation and would not add to their misery or expenses.”

7. From the aforesaid decision it is clear that whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence, the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case, subject to such objections to be decided at the last stage in the final judgment. It is also clear that if the objection relates to deficiency of stamp duty of a document, the Court has to decide the objection before proceeding further in law.

8. In this case, insofar as the Complaint No.2 is concerned, the learned counsel for the respondent has not raised any objection with regard to the deficiency of Stamp Duty paid on the said document. On the contrary, he raised certain objections with regard to relevancy and admissibility of the said document. With regard to the Complaint No.8 also, he raised certain objections with regard to relevancy and

admissibility of the said document. In view of the aforesaid decision, the objected documents can be marked tentatively as exhibits subject to such objections will be decided at the last stage in the final judgment.

9. In the result, this application is allowed and this Court directs the learned Additional Master No.IV to mark the said documents, subject to the objections to be decided at the last stage in the final judgment. No costs.

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30.03.2021
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P.RAJAMANICKAM, J.

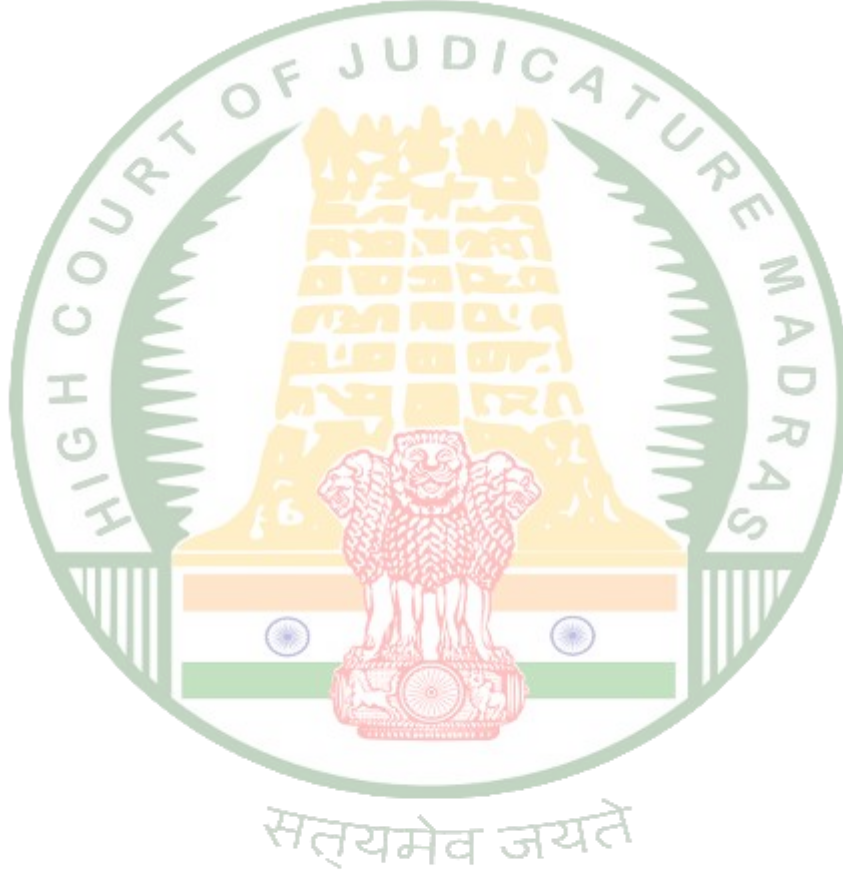
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