

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2021

CORAM

THE HON'BLE MR. JUSTICE C.V. KARTHIKEYAN

**C.R.P. (PD) No. 818 of 2021
and
C.M.P. No. 6790 of 2021**

1. Gelateria Montecatini Terme
Ice-Cream Art India Private Limited,
Represented by its Director,
Adriano Natalini.
2. Adriano Natalini,
Director,
Gelateria Montecatini Terme
Ice-Cream Art India Private Limited.
3. S.Prathap,
Director,
Gelateria Montecatini Terme
Ice-Cream Art India Private Limited.

... Petitioners

-vs-

Mr. Aswath Raj,
Proprietor,
M/s. The Soul Food Company,
Having Office at
No. 145, 17th Main Road,
Anna Nagar-West,
Chennai - 600 040.

... Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the fair and final order dated 17.02.2021 made

in I.A. No. 2 of 2020 in O.S. No. 1284 of 2019 on the file of the III Additional City Civil Court, Chennai.

For Petitioners : Mr. K.S.Karthik Raja

For Respondents : Mrs. D.Roobini Chitra

ORDER

The Civil Revision Petition has been filed questioning the order dated 17.02.2021 in I.A. No. 2 of 2020 passed by the III Additional City Civil Court, Chennai.

2. The said interlocutory application in I.A. No. 2 of 2020 has been filed by the Plaintiff in the suit under Order VII Rule 14(2) of the Code of Civil Procedure, 1908, to receive the documents mentioned in the Petition. In the affidavit filed in support of the said Petition, it had been stated that the suit has been filed for recovery of damages and that the original documents have been misplaced and they have been found only recently. It had also been stated that the said documents have not been filed in the suit. It had also been stated that the non-filing of the documents is neither willful nor wanton. A string of documents has been listed along with the Petition, which includes lease agreement, maintenance bill, electricity bill, hardware and traders bill, invoices and cash receipt vouchers.

3. Counter has been filed on behalf of the Third Defendant in the suit and the said counter has been adopted by the First and Second Defendants. They questioned the maintainability of the application. They also stated that the Plaintiff had not done any interior work. It has also been stated that in the lease deed it has been mentioned that when such work is done, costs should be recovered only from the Landlord of the building and not from the present Revision Petitioners/Defendants in the suit. It had also been stated that the documents have been filed only to fill the lacuna in the case and the relevancy of the documents has also been questioned.

4. The Learned Judge, while examining the Petition and counter, had stated that the documents could be taken on file subject to proving the relevancy of the documents during the course of the trial. It had also been stated that the issue of admissibility would also be considered only at the time of marking the documents.

5. Heard Mr. K.S.Karthik Raja, Learned Counsel for the Petitioner/Defendants in the suit and Mrs. D.Roobini Chitra, Learned Counsel for the Respondent/Plaintiff in the suit.

6. This is an issue which naturally arises as grievance of any party either the Plaintiff or the Defendant in the suit, when documents are not produced before the trial commences and later indulgence is sought from the Court to mark them as documents. This grievance is aggravated when such permission is requested after the pleadings have been settled and after issues have been framed. It is trite in law to note that no evidence can be examined without there being sufficient pleadings for the same. However, any Trial is an on going process and wanders around various stages. The marking of documents is one of the stages. During the course of any trial, documents are produced to be marked as exhibits and the party who produces the document feels that if the documents are refused to be marked, then the whole case would shatter down the earth. On the other hand, the other party feels that if the documents are permitted to be marked, then the pendulum waves swing against them.

7. Every document has to be tested during the course of trial. It has to be admissible in nature. It has to be primary documents and if secondary documents are produced, they have to pass the tests as stated in the Indian Evidence Act, 1872, for production of secondary documents.

8. If the original document is produced, again, they should be admissible in manner known to law. They should also be relevant to the issues framed. Learned Counsels have to point out any lacuna while marking each one of the documents and point out whether the said document could be actually relied by the Learned Judge at the time of delivering final judgment or should be rejected. These are aspects which every Learned Judge goes through not only during the course of the trial, also while arguments are advanced.

9. I am confident that the Learned Counsel who appears for the Defendant would be certainly calling each one of the documents produced by the Petitioner and raise the issue of admissibility, relevancy and proof. If there are objections at the time of marking of the documents, the Learned Counsel is at liberty to raise those objections and the Learned Judge should note down the objections raised in respect of each of the documents. Thereafter, at the time of delivering judgment, those objections should be addressed by the Learned Counsel and should be answered by the Learned Judge.

10. I firmly hold that no prejudice would be caused to the Defendants by marking these documents. I am confident that both the Learned Counsels would follow the principles laid down for proving the doubts, for establishing the

relevancy of the documents and also on their admissibility and thereafter, invite the Learned Judge to mark the documents now produced by the Plaintiff.

11. The parties are advised to go back before the Learned Trial Judge and participate in the trial proceedings.

12. I do not want to use the word 'the order is upheld' though it is not interfered with since observations have been given in the course of the order.

13. With the said observations, the Civil Revision Petition is disposed of. No order as to costs. Consequently, the connected Miscellaneous Petition is closed.

16.04.2021

vjt

Index: Yes

Internet: Yes

Speaking Order/Non-speaking Order

To

The III Additional City Civil Court,
Chennai.

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C.V. KARTHIKEYAN, J.

vjt



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