

A.No.1581 of 2021
in
C.S.No.444 of 2021

G.JAYACHANDRAN, J.

The suit is filed against the Insurance Company and the bank by the plaintiff for recovery of money, which according to the plaintiff payable by the Insurance Company for the loss sustained by them in the fire accident.

2. The Insurance Company has filed a written statement denying the liability and the maintenance of the suit. At paragraph 9 of the written statement, there is a specific averment made by the Insurance Company that they have taken up the investigation and the report filed by the Surveyor reveal that due to misunderstanding between the plaintiff and the landlord, the landlord had disconnected the electricity connection to the plaintiff's show room. To over come the difficulty of power supply, the plaintiff had installed 50KVA Gen-set for the supply of power to the shop. Co-relating the use of Gen-set with the fire accident and non intimation of installing the Gen-set the defences of breach of policy terms and conditions is taken. Now the present application is filed to receive 12 documents in support of the written statement. In the affidavit filed to receive the additional written statement, the applicant has given the reasons for not filing those documents along with the written

statement. For easy understanding, the said reason as found in the affidavit is extracted as below:-

“3. I submit that the various documents such as the survey report, investigation report were not filed along with the written statement as the same were not available. The divisional office was earlier a branch office and was subsequently converted a division covering more areas. The office was shifted to another address. The instructing office/Regional office is situated at Puducherry. Due to the circulation of the original documents to various offices, the said documents were not filed in time along with the written statement. Further due to lock down on account of COVID 10 Pandemic, we could not forward the documents to our Advocate. Now we are able to locate the original documents and seek the permission of this Hon'ble Court to file the documents as per the list of documents morefully set out in the judge's summon.

4. I submit that the delay in filing the documents is neither willful nor wanton but due to the above said reasons. No prejudice will be caused to the plaintiff if the documents are allowed to be taken on file of this Hon'ble Court and the applicants/defendants are permitted to mark the same

subject to proof, admissibility and relevancy. If the application for grant of leave to file the documents is not allowed, the applicants/defendants will be put to irreparable hardship and our defence will be prejudiced. Therefore, it is prayed that the application for reception of documents may be allowed to enable the applicants/defendants to substantiate their defence as per the various averments in the written statement.”

3. The learned counsel appearing for the plaintiff relying upon the Order 11 Rule 7, 9 and 10 of C.P.C., as amended by the Commercial Courts Act, 2015, strongly opposed the application on the ground that the defendants ought to have produced their documents along with the written statement. Admittedly, the documents now sought to be introduced wherein, their possession, custody and control by the defendants. While so, there is no reasonable cause for non disclosure of these documents in the written statement at the first instance and for not producing the same along with the written statement even in the present affidavit filed in support of the application. The applicant has not provided any reasonable cause to receive the additional documents which were very well in their possession and control.

4. This Court, after considering the defence taken in the written statement, more particularly, in paragraphs 9 and 10 of the written statement and paragraphs 3 and 4 of the affidavit filed in support of the present application is of the considered view that there is a reasonable cause showed by the applicant for not producing the document at the time of filing the written statement. Therefore, to meet the ends of justice and inconsonance with the spirit of Order 11 Rule 9 and 10 of C.P.C., as amended Commercial Court Act, 2015, it is fit case to allow and permit the applicants/defendants 1 and 2 to introduce these additional documents subject to the condition of right of the plaintiff to inspect the documents, admit or denial the documents in the course of trial.

5. Accordingly, the application is allowed with cost of Rs.10,000/- payable to the plaintiff on or before 30.05.2021.

6. Post the matter on 08.06.2021 'for Case Management Hearing'.

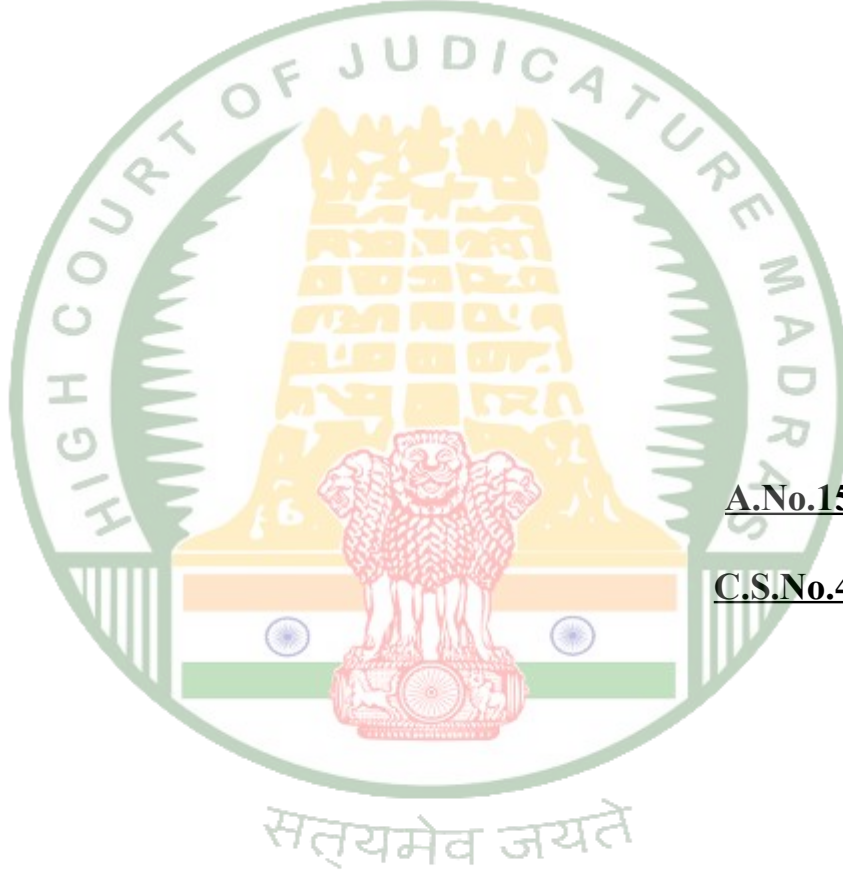
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DR.G.JAYACHANDRAN, J.

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