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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 09TH DAY OF SEPTEMBER 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

A.No.2299 of 2021

in

C.S.No.140 of 2019

In the matter of Agreement

No.3/2008-09 Dated 30.06.2008

M/s NAPC Limited,
a company incorporated under the
companies Act, 1956,
having its registered office at
Apex Plaza, 6th Floor,
No.3, Nungambakkam High Road,
Nungambakkam,
Chennai – 600 034.

: Applicant/ Plaintiff

-Versus-

1.The Executive Director,
Tamil Nadu Road Infrastructure
Development Corporation,
4th Floor, LLA building, 735,
Anna Salai,
Chennai – 600 002.

2.The Engineer,
Tamil Nadu Road Infrastructure
Development Corporation,
4th Floor, LLA building, 735,
Anna Salai,
Chennai – 600 002.

: Respondents/ Defendants



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Application praying that this Hon'ble Court be pleased to permit the Applicant/Plaintiff to file additional documents No.186 to No.236 in the above suit set out in the Schedule to the Judges Summons herein.

This application coming coming on this day before this Court for hearing in the presence of Mr.Anirudh Krishnan, Advocate for Applicant herein, and Mr.D.Balaraman, Advocate for the respondents herein, and upon reading the Judges Summons and the common affidavit of N.Padmanaban filed herein, , **it is ordered as follows:**

That the Plaintiff/Applicant herein shall pay a sum of Rs.15,000/- (Rupees Fifteen Thousand only) as costs to the defendants herein on or before 29.09.2021.

2. That on subject to the condition as mentioned in clause (1) supra, the plaintiff herein shall be permitted to introduce document numbers 186 to 225, subject to proof and relevancy, on payment of costs.



WEB COPY 3. That the A.No.2299 of 2021 in C.S.No.140 of 2019 be posted on 30.09.2021 for reporting compliance.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
09TH DAY OF SEPTEMBER 2021.

Sd/-
ASSISTANT REGISTRAR (COMM.CASES)
//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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24.09.2021

A.No.2299 of 2021
in
C.S.No.140 of 2019

ORDER :-

DATED: 09.09.2021

THE HON'BLE DR.JUSTICE
G.JAYACHANDRAN

FOR APPROVAL: 24.09.2021

APPROVED ON: 24.09.2021



No.236 in the above suit set out in the Schedule to the Judges Summons herein.

This Civil Suit coming on this day before this court for hearing **the court made the following order:-**

This application is filed by the plaintiff to receive 51 additional documents as set out in the schedule in the Judges Summon.

2.The suit is for recovery of money arising out of contract filed by a Private Limited Company against Tamil Nadu Road Infrastructure Development Corporation. The suit is of the year 2019. After completion of pleadings and framing of issues, the case was sent to the Additional Master No.III for recording evidence.

3.In the course of the examination of plaintiff's witness, the plaintiff realised that five documents were not marked and hence, took an application to receive five additional documents, after marking 180 documents on the side of the plaintiff.

4.On considering the application to receive the additional documents, this Court in Application No.9192 of 2019 allowed the same on 28.11.2019. Accordingly, PW-1 has marked the additional documents as Exs.P181 to P185.

5.After the commencement of the cross examination of PW1, due to pandemic, the examination of the witnesses could not be proceeded. At this



juncture, the applicant has filed the present application to receive 51 additional documents. Out of which, few are secondary evidence.

6.The reason stated in the affidavit to receive the additional documents is that, one Mr.Loganathan, who was the person in-charge of the contract, left the plaintiff company during the month of November 2014 and only recently, they were able to get back his service and on consulting him, they have come to know that certain documents, which are mainly related to the contemporaneous communication between the parties and were not filed along with the plaint. Therefore, these documents, which are essential for deciding the suit, have to be admitted and the plaintiff is intended to mark these documents through the said Loganathan.

7.The learned Counsel appearing for the defendants submitted that, the documents, which are now sought to be introduced, are between December 2008 and August 2012. The suit was filed in the year 2019. At the time of filing the suit, all the documents admittedly were in possession of the plaintiff. Even if there was any genuine reason for not filing these documents along with the plaint, which were in possession of the plaintiff, they should have been vigilant in producing the documents at least before commencement of the examination of witnesses, so that the defendants could have been in a position to counter the contents of the documents, but

after commencement of examining the witnesses and after exercising the



right of adducing the additional documents, the plaintiff cannot file the application to receive bunch of additional documents. The reasons set out in the affidavit are not sufficient or genuine for the Court to admit new documents, after commencement of trial. Hence, sought for dismissal of the application.

8. In this regard, it is to be noted that it has become a common parlance of filing applications of this sort at various stages of trial with multiple reasons. On strict interpretation and understanding the provisions of C.P.C, the statute expects that the litigant should file the documents along with their pleadings and also a declaration about the documents as mentioned in Order VII of CPC. However, framers of the law as well as the Courts have been aware of the factual circumstances, where the parties are prevented from filing the documents (or) not in possession of the documents (or) come to know about the existence of the documents, on a later point, can at any time file an application to receive the documents and for receiving documents belatedly, there should be sufficient cause satisfactorily explained to the Court.

9. The bottom line of the provisions and the judgments of the Court is only to ensure that the parties place all the evidence available with him before the Court for proper adjudication and to arrive at a fair conclusion.



10. While deciding those applications to receive additional documents, the Court normally looks into the conduct of the parties, the stage at which it is produced, the reason given for non-producing at the earliest point of time and likelihood of prejudice to the other side.

11. In the instant case, most of the documents, which are to be marked by the plaintiff, are correspondence between the plaintiff and the first defendant (or) the plaintiff to Wilbur Smith Associates (or) the correspondence between the defendants and Wilbur Smith Associates. The plaintiff, who has instituted the suit ought to have produced the documents at the first instance i.e., along with the plaint but failed. For the reasons stated in paragraph No.5 of the affidavit.

12. The plaintiff seeks condonation of their conduct and to accept the documents. It is also submitted by the learned counsel appearing for the applicant that when voluminous documents are involved, some of the documents which are relevant, is likely to be missed or omitted to be included in the pleadings, due to oversight or inadvertence or due to lack of instructions to the counsel. It has to be seen as to whether in this case, any prejudice will be caused to the defendants by entertaining this application.

13. Yet another point to be taken note is, if these documents are not something alien to the defendants, document numbers 186 to 225 which now sought to be introduced, are all correspondence, between the plaintiff



and the defendants. So, the defendants knowledge of these documents could be inferred.

14. Therefore, to meet the ends of justice, the plaintiff may be permitted to introduce document numbers 186 to 225, subject to proof and relevancy, on payment of costs Rs.15,000/- to the defendants. The costs shall be paid on or before 29th September 2021 to the defendants.

15. Post the case on 30.09.2021 for reporting compliance.

Sd./-G.J.J
09.09.2021

//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

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