

A.No.2613 of 2020
in C.S.No.381 of 2019

C.V.KARTHIKEYAN,J.

Heard the learned counsel for the applicant and also the learned counsel for the respondent.

2.Counter has also been filed.

3.This application has been filed seeking permission to file additional documents. The documents which are sought to be filed are Deeds of Partnership, Reconstitution Deed, Certificate of Incorporation and Resolution passed in a meeting of the Board of Directors.

4.In the affidavit filed in support of the said application, it had been stated that the originals of the said documents would be produced for comparison at the time the documents are marked. It had been stated that the documents are relevant to decide the issues in controversy in the suit. It had been stated that no prejudice would be caused, if the documents are permitted to be introduced.

5. In the counter affidavit, it had been stated that the actual necessity for filing of the documents have not been stated. It had been stated that the documents were available at the time of institution of the suit with the plaintiff and the reasons for not producing them at that particular point of time were not stated in the affidavit. It had been stated that the suit was dismissed for non-prosecution and subsequently restored. It was stated that plaintiff has been protracting the proceedings.

6. I have deeply considered the arguments advanced. It would be highly improper, if either the plaintiff or the defendant were to be prevented from producing documents prior to commencement of trial to substantiate their cases. If the trial had commenced and then the parties seek permission to produce documents, then necessarily a different view will have to be taken. If prior to commencement of trial, either the plaintiff or the defendant seek to produce documents, then the reason for not producing of the document at the time of institution of the suit will have to be examined. Such reasons should be spoken to by the witness at the time of examination in chief. Any reason advanced will be subjected to cross-examination. If reasons are not advanced to the satisfaction of the Court,

then while considering the documents at the time of final arguments, the Court can always reject the said documents.

7. Merely marking of the documents would not mean that the documents are admissible or relevant or proved in manner known to law. It is a fact that the Commercial Courts Act, 2015 has strict clauses with respect to producing documents at a later stage after institution of the suit. However, if any acceptable reason is given, then with leave of the Court, the documents can be produced. But the reasons advanced will have to withstand test of cross-examination. Therefore, quite apart from stating the averments in the plaint, the witness for the plaintiff is also required to speak about the reasons for not producing these documents at the time of institution of the suit. The witness will also have to speak about the relevancy of the documents. Reasons advanced for relevancy should also be tested. The documents will have to be proved in manner known to law. Analysis of the documents marked is a procedure which can be entered into only at the time of advancing final arguments. Therefore, I hold that said documents may be taken on record subject to the caveats mentioned above.

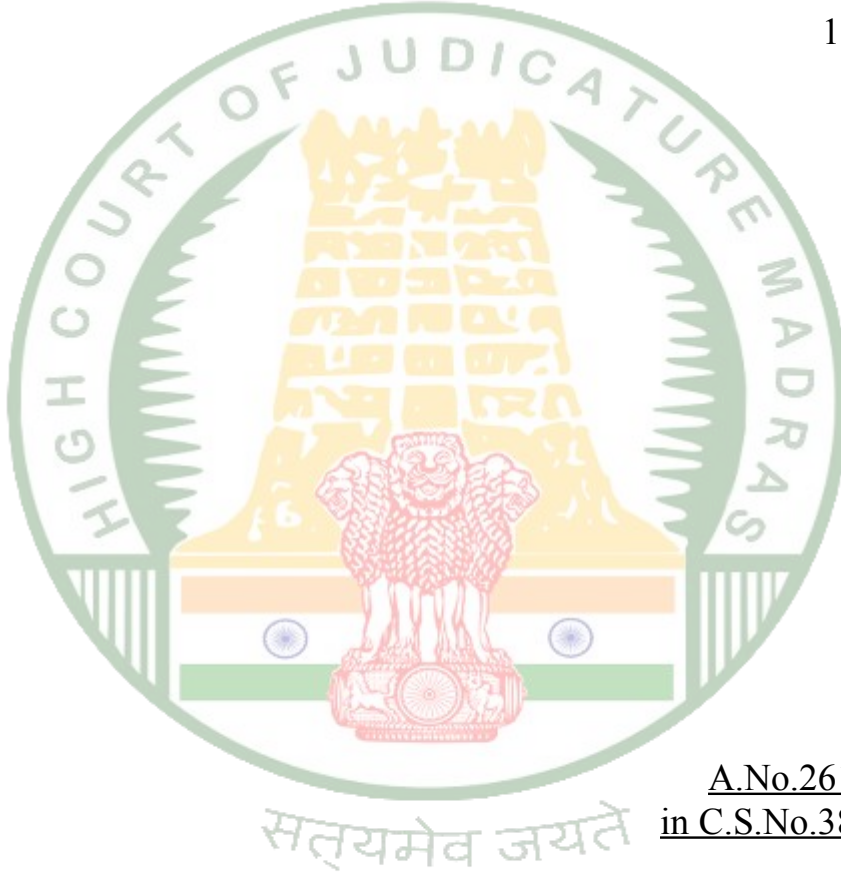
C.V.KARTHIKEYAN,J.

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8.In view of the above reasons, the application is allowed. No order as to costs.

18.03.2021
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