

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 18TH DAY OF MARCH 2021

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

A.Nos.2865, 2866 of 2020

and

A.No.42 of 2021

in

C.S.NO.382 OF 2019

In the matter of Copy Right
Act, 1957

and

In the matter of Chakrapani
and 21 other films

C.S.NO.382 OF 2019 :

M/s.BHARANI PICTURES PRIVATE LIMITED

Rep by its Manager, Ramakrishna Bhatt,

s/o.Late A.Narayana Bhatt, सत्यमेव जयते

No.57, N.S.K.Salai,

formerly Arcot Road,

Saligramam, Chennai-600 093

..Plaintiff/Applicant
(in all applications)

-VS-

NARINI SRINIVAS

Proprietor, Studio One,

No.6, Road No.1, Film Nagar,

Opp to Barathi Vidya Bhavan,

Jubilee Hills, Hyderabad-96

Also at

Narini Network Private Limited,
Narini Nagar, Panchavathi Colony,
Manikonda, Hyderabad-500 089.

..Defendant/Respondent
(in all applications)

A.No.42 of 2021:

Application praying that this Hon'ble Court be pleased to grant leave to produce the documents mentioned in the list of documents set out in the Judges Summons and to receive the same in evidence in the above suit.

A.No.2865 of 2020:

Application praying that this Hon'ble Court be pleased to recall the Plaintiff's evidence for marking additional documents in the above suit.

A.No.2866 of 2020:

Application praying that this Hon'ble Court be pleased to reopen the Plaintiffs evidence for filing additional documents in the above suit.

These Applications coming on this day before this Court for hearing, the court made the following order:

These three applications have been filed by the plaintiff in the suit. Before proceeding further it must be mentioned that the plaintiff had examined as their witness PW1 and marked documents and the witness had also been cross examined on behalf of the defendant. Applications have been filed subsequent to that. The relief sought in present applications are

to recall the said witness for the purpose of marking additional documents, to reopen the evidence and to produce additional documents.

2.In the affidavit filed in support of the said applications seeking to recall the witness and to reopen the evidence, it had been stated that the suit was moved emergently as there was continuous infringement of the Copyright in the suit film and due to oversight the documents were not filed along with the plaint. It had also been stated that the documents showing ownership of Copyright had been filed along with the suit. It had been further stated that each one of the documents now sought to be produced are relevant. It was therefore claimed that the plaintiff should be given an opportunity to file additional documents and for that purpose the evidence of PW-1 has to be reopened and the witness is to be recalled for further examination.

3.In the affidavit filed in support of A.No.42 of 2021, it had been stated that the suit is now heading towards trial and the proof affidavit of PW1 was to be settled. At that particular point of time the deponent of the affidavit found out, that certain documents have not been produced and therefore, the said documents now produced. It was also stated that the suit

was filed emergently and therefore necessary documents relating to

ownership of Copyright alone filed. Permission is now sought to produce relevant documents namely, Deeds of Partnership, Reconstitution Deed, Certificate of Incorporation and Resolution passed in a meeting of the Board of Directors.

4. Quite parallelly, the plaintiff had also instituted C.S.No.380 of 2019 and C.S.No.381 of 2019. Similar applications to file additional documents were also filed in the two suits. I had occasion to consider them and I had permitted the plaintiff to produce the additional documents.

5. However, it is to be noted that there is one significant difference between the stage of the said suits in C.S.No.380 of 2019 and C.S.No.381 of 2019 and the present suit namely, C.S.No.382 of 2019.

4. In the present suit, the plaintiff had let in evidence. It is however stated in the affidavit that the proof affidavit of PW-1 was sought to be settled, as a fact, the evidence of PW-1 has already been recorded. The witness was examined and documents were marked. The necessity for filing additional documents was not stated even during the chief examination of the witness. Thereafter, the witness was also cross-examined. After recording the cross examination, the present applications had been filed.

6.I hold that this is stretching the liberty given under Order XI of CPC, a little too far .The learned counsel for the plaintiff, however, stated that the plaintiff cannot be prevented or shut out from producing necessary documents and that the issues regarding relevancy will have to be decided during cross examination. I do not agree that the said contention.

7. The documents to be relied on by either party will have to be settled prior to commencement of trial. Order XI of the Code of Civil Procedure, 1908 gives the procedure to be resorted relating to Disclosure, Discovery and Inspection of documents prior to commencement of trial. But after trial had commenced, the parties will have to abide with the documents, which have already been settled. In this case, documents were already filed and the issues have already been framed. The applicant cannot turn around and seek to file further documents.

8.The court has to balance the inconvenience which would be caused to the defendant. Here the defendant has cross-examined the witness for the plaintiff. Thereafter, the plaintiff cannot be permitted to produce further documents. Order XI of the Code of Civil Procedure, 1908 had been amended with the introduction of the Commercial Courts Act, 2015. The

said Order relates to Disclosure, Discovery and Inspection of documents. In Order XI Rule 5 of the Code of Civil Procedure, 1908, it has been very categorically stated that the plaintiff shall not be allowed to rely on documents, which were in the possession of the plaintiff, but not disclosed in the plaint, except by leave of Court. The term 'leave of court' cannot be taken advantage of. There is strict interpretation for grant of leave and boundaries will have to be marked. That boundary is marked, when the trial commences.

9. The issues are framed after hearing the parties. The Issues framed after pleadings are settled. The issues are framed after all documents have been filed and examined. As a matter of fact, there is also procedure contemplated in the Commercial Courts Act, 2015 for filing affidavit of Admission / Denial of documents. Both the parties have filed necessary affidavits in this case, either admitting or denying the documents filed by other side. It is only therefore, that the issues are framed. It would not be appropriate to set the clock back and permitting the documents to be introduced after examination of witnesses.

10. I am deeply conscious that similar applications were allowed by

me in other two suits mentioned above, wherein, the trial has not

commenced. I held that the plaintiff could not be prevented from producing the very same documents as are sought to be now produced. But in this case, the plaintiff has grazed the witness box. He had not protested that there are further documents in his possession which are required to establish his case. He had not stated so in cross-examination or when he adduced evidence. Thereafter, an affidavit has been filed seeking permission to reopen the evidence, to recall the witness and to produce additional documents.

11. The learned counsel for the respondent had drawn the attention to the judgment of a learned Single Judge in ***Zee Entertainment Enterprises Ltd., Vs. Saregama India Ltd.***, reported in **2019 SCC OnLine Del 10215**. As a matter of fact, the learned Single Judge had passed an earlier order in ***Nitin Gupta Vs. Texmaco Infrastructure and Holding Limited*** reported in **2019 SCC OnLine Del 8367**. In both the orders the learned Single Judge had refused permission to produce additional documents.

12. I would also strengthen my view, by taking note of the stage at which the present application has been filed. It has been filed after trial has commenced. Irrespective of the fact, whether the defendant had filed their written statement or had forfeited their right to file their written statement additional documents cannot be permitted to be introduced.

13.It is trite to point out that the burden is cast on the plaintiff to establish the suit. Such establishment can be done only by placing documents prior to commencement of recording of evidence. After cross-examination, if documents are sought to be produced, it sends out an impression that the plaintiff seeks to fill a lacuna, which had occurred during cross-examination. That cannot be permitted.

14.In view of these reasons, I am not able to accede myself to the requests sought in these applications. Hence the applications are dismissed. No order as to costs.

Sd/-C.V.K.J
18.03.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

JJ 01/04/2021

COURT OFFICER(O.S.)

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