

A.No.3813 of 2021
in
C.S.(Comm.Div) No.200 of 2019

DR.G.JAYACHANDRAN, J.

This application is taken out by the plaintiff to substitute the witness Mr.P.Kumar who is in the midst of the examination.

2. The reason for substitution as explained in the affidavit is that, Mr.P.Kumar who was working as Manager in the plaintiff concern filed his proof affidavit and marked 5 exhibits, but due to covid 19, his health deteriorated and left the job and now settled permanently in his native place and not in a position to come and continue his deposition. Therefore, the plaintiff wants to substitute herself and depose.

3.Learned counsel for the contesting defendant submitted that procedure code mandates that the parties to the proceedings should be examined first and to be followed by the third parties whereas in this case, the Proprietrix did not come forward to depose first but allowed her Manager to represent the plaintiff and in the course of examining P.W.1, certain photocopies and documents to which the plaintiff is not party were marked despite objections. Therefore, if the entire evidence of P.W.1 so far recorded eschewed and fresh evidence is recorded and documents

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which are original and admissible alone are permitted to be marked, the defendant will have no serious objection in allowing this application.

4.On hearing the counsels, this Court finds that there is force in the submission made by the learned counsel for the defendant. The technical objection regarding the parties to be examined first will also be satisfied if the Proprietrix of the plaintiff is examined as P.W.1 after eschewing the evidence already recorded.

5.Insofar as the documents are concerned, the learned Additional Master while recording the evidence and admitting documents shall ensure that original documents are filed and those documents should be relevant and spoken by the competent witness.

6. With this observation, this application is allowed.

7. Post the matter before the learned Additional Master I on **17.11.2021** for continuation of examining the witness. On completion of examining the witnesses on both sides, the matter may be reverted back to the Court for further proceedings.

26.10.2021

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