



Application No.4099 of 2021
in C.S.No.62 of 2020

N.ANAND VENKATESH,J.

This application has been filed under Order XVIII Rule 3A of C.P.C. by the applicant/plaintiff seeking for leave of this Court to examine himself as the last witness after the evidence of the other three witnesses are complete on the side of the plaintiff.

2.Heard the learned counsel for the applicant/plaintiff and the learned counsel appearing on behalf of the respondents/defendants.

3.The applicant/plaintiff has filed the above suit seeking for the relief of liquidated damages and future damages on the allegation that the Company has suffered wrongful loss due to the wrongful act of the defendants. The suit is now at the stage of trial and the witnesses on the side of the plaintiff will have to be examined.

4.The reason that has been assigned by the applicant seeking for the leave of this Court to examine the Director of the Plaintiff Company as the last witness is that the plaintiff wants to examine three other witnesses namely a Civil Engineer, Company Secretary and the Auditor of the Plaintiff Company and establish the market value of the property, resolution passed



by the Company and calculation of the damages suffered by the plaintiff and thereafter, the Director of the Company wants to examine himself.

5.This application is resisted by the respondents on the ground that the respondents have taken a preliminary objection with regard to the very maintainability of the suit, since it is barred by limitation and this defence can be substantially established only if the Director of the Company is examined as the 1st witness. The learned counsel for the respondents further submitted that the attempt made by the applicant is only to cover up the lacuna that will be left over by the other three witnesses.

6.Order XVIII of C.P.C. deals with the hearing of the suit and the examination of the witnesses. It is the plaintiff who always has the right to begin. While doing so, it is the plaintiff who has to first get into the witness box and adduce evidence. Only thereafter, other witnesses will be examined on the side of the plaintiff. However, an exception is carved out under Order 38 Rule 3A of C.P.C wherein, the party can seek the leave of the Court to appear as a witness at a later stage after the other witnesses are examined. While considering such an application, the Court must be satisfied with the reasons assigned in the application and the Court must also ensure that the party is not attempting to cover up the lacuna at a later point of time after examining the other witnesses.



7. In the present case, admittedly the suit has been instituted by a Company. The Company by itself is a legal entity which is represented through a natural person. In the present case, this Company is represented by its Director. The Company in order to establish the wrongful loss suffered, wants to examine a Civil Engineer, the Company Secretary and the Auditor of the Plaintiff Company. Each of these witnesses are going to adduce evidence on the specific areas about which they are well acquainted. The evidence that is adduced by these witnesses will confine itself to such specialized areas about which only they can speak about. Ultimately, the Director of the Company will speak about the role played by him in the entire transaction and even if the Director comes at the end as a witness, there is no scope for the Director to cover up the lacuna since, each of the other witnesses are going to speak about certain ascertained areas about which they are well acquainted.

8. This Court is satisfied with the reasons assigned in Paragraph No.4 of the affidavit and this Court does not find any valid grounds to reject the leave sought for by the plaintiff.

9. This Court in more than one judgment has held that the Court must only be satisfied that there is a genuine or germane reason as to why the



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party is examining himself at a later stage. This Court has held that such a leave is procedural in nature and such a leave can even be sought for at a later stage and it is not always necessary that such an application has to be filed before the commencement of the examination of the witnesses. In the present case, such an application has been filed even before the commencement of the examination of witnesses.

10.In view of the above discussion, this Court is satisfied with the reasons assigned by the applicant and this Court is inclined to grant leave sought for by the applicant.

11.This application accordingly stands allowed.

07.12.2021

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