



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 27TH DAY OF APRIL 2022

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

A. No.796 of 2022

in

C.S. No.39 of 2006

M/s. Empee Sugar and Chemicals Ltd.,
Rep. By its Senior Vice President,
Mr.Chandra Mohan,
No.59, Harris Road,
Pudupet,
Chennai – 600 008.

... Plaintiff

-Versus-

The Oriental Insurance Company Ltd.,
Rep by its regional Manager,
UTL Building,
No.8, Esplanade,
Chennai – 600 108.

2. The Oriental Insurance Company Ltd.,
rep by its Divisional Manager,
Post Box No. 2127,
Bali Towers, 1st Floor,
No.1, Abdul Razak Street,
Saidapet,
Chennai – 600 015

... Defendants

A. No.796 of 2022:-

1. The Oriental Insurance Company Ltd.,
Rep by its regional Manager,
UTL Building,
No.8, Esplanade,
Chennai – 600 108.



2. The Oriental Insurance Company Ltd.,
rep by its Divisional Manager,
Post Box No. 2127,
Bali Towers, 1st Floor,
No.1, Abdul Razak Street,
Saidapet,
Chennai – 600 015

... Applicant

-vs-

M/s. Empee Sugar and Chemicals Ltd.,
Rep. By its Senior Vice President,
Mr.Chandramohan,
No.59, Harris Road,
Pudupet,
Chennai – 600 008.

... Respondent

Application praying that this Hon'ble Court be pleased to grant leave to the defendants 1 and 2 to file the book containing enclosures Nos.5,6,7 and 20 of the final survey report Ex.D6 dated 26.12.2001 filed along with the list of document, order for reception of the same to be marked as enclosure to Ex.D6.

This Application coming on this day before this court for hearing, the court made the following order:-

This application has been filed to grant leave to the defendants 1 and 2 to file the book containing enclosure Nos.5, 6, 7, and 20 of the final Survey Report as Ex.D6, dated 26.12.2001 along with the list of documents and order for reception of the same to be marked as enclosure to Ex.D6.



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2. The case of the applicants/defendants 1 and 2 is that the first applicant is the Regional Manager in the office of the Oriental Insurance Company Limited and the second applicant is the Divisional Manager of the Oriental Insurance Company Limited. The respondent/plaintiff, namely, M/s.Empee Sugar and Chemicals Limited, represented by its Senior Vice President Mr.R. Chandramohan, filed the above suit for recovery of money allegedly due under the policy issued by the applicants/defendants. In the suit, they have filed a detailed written statement, wherein the nature of the policy, the basis of the claim and as to how the claim is not maintainable, were made in detail. In the meanwhile, the applicants have filed an A.No.3819 of 2021 for grant of leave to file the documents, which was allowed by this Court on 07.12.2021 on payment of costs of Rs.10,000/-, which was duly paid and the documents including the Final Survey Report was received and marked as Ex.D6 by the defendant. At the time of filing the documents, they had filed the Final Survey Report issued by M/s. Comtec dated 26.12.2001 and the book containing the enclosure Nos.5, 6, 7 and 20 was not available with them. The second defendant, who is the Divisional Manager, was able to locate the said Book No.2 containing the aforesaid enclosures to the Final Survey Report dated 26.12.2001 marked as Ex.D6, which was inadvertently kept along with other claim files.



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3. It is the further case of the applicants/defendants 1 and 2 that during the examination of DW2-Manivannan R.Rajan, the author of Ex.D6, the said book No.2 containing the enclosures 5 to 7 and 20, was sought to be submitted to be kept as part of Ex.D6 Final Survey Report. The applicants further submit that non-filing of the said book containing the aforesaid enclosures to Ex.D6 Final Survey Report, dated 26.12.2001 along with A.No.3819 of 2021, is neither wilful nor wanton, but only due to the reasons explained hereinabove. According to the defendants, no prejudice would be caused to the respondent/plaintiff, if the said book forming part of Ex.D6 is allowed to be received and marked as part of Ex.D6 and would only enable the defendants to file the entire document of the report of Ex.D6. Hence, they prayed to grant leave to file the book containing enclosure Nos.5, 6, 7 and 20 of the Final Survey Report as Ex.D6 dated 26.12.2001 and order for the reception of the same to be marked as enclosure to Ex.D6.

4. The learned counsel for the plaintiff objected for receiving the said book as part of Ex.D6, as the same was not filed along with A.No.3819 of 2021. Hence, this application for grant of leave to receive the said book containing enclosures 5, 6, 7 and 20, which forms part of the Final Survey



Report Ex.D6, dated 26.12.2001, may not be entertained by this Court. The learned counsel appearing for the respondent would further submit that the above application cannot be accepted as it was filed only to fill up the lacuna on the part of the defendants 1 and 2. He would further submit that if the Court allows the defendants to file the documents as and when they preferred to mark it, it would prolong the proceedings and cause prejudice to the plaintiff.

5. In support of his contentions, the learned counsel appearing for the respondent/plaintiff has relied on the following judgments:

(i) In the decision reported in ***Sudhir Kumar v. Vinay Kumar. G.B.*** reported in ***MANU/SC/0650/2021***, (ii) In O.S.A.Nos.13 to 15 of 2020, dated 05.02.2020 (***M/s. Kapoor Imaging Private Limited v. M/s. Kodak (India) Private Limited***), (iii) In the decision reported in ***MANU/GJ/0870/2018 (State of Gujarat v. Union of India*** and (iv) In the decision reported in ***MANU/WB/0537/2020 (ITC Limited v. JP Morgan Mutual Fund India Private Limited and others)***

6. The learned counsel for the defendants 1 and 2, in reply, would submit that what is sought to be marked is not a new document and it is only enclosure to the exhibit copies of the documents which was already



filed as Ex.P6 in W.P.No.22385 of 2004, which in the form of typed set of papers was served on the plaintiff earliest. There is no intention on the part of the defendants 1 and 2 to prolong the trial and they are ready and willing to participate in the trial and extend their cooperation to complete the trial within a time frame.

7. Heard both sides and perused the materials available on record.

8. On a perusal of the records, it is seen that the documents sought to be marked on behalf of the defendants 1 and 2 is nothing but enclosure to Ex.D6, which was already marked during the course of trial. It is their case that the enclosure to Ex.D6 has been omitted to be marked and the contents of the enclosure relates to vital defence to be raised by the defendants to disprove the averments of the plaintiff. Taking note of the fact that the document sought to be marked is not new document and the same was filed/served on the plaintiff in the writ proceedings in W.P.No.22385 of 2004 and hence, having regard to the above, this Court is of the view that the document which is sought to be marked by the defendants 1 and 2 is not a new document. The document sought to be marked are annexure to Ex.D6. In other words, Ex.D6 contain various annexures of which some of the annexures have been filed while others were omitted to be marked



along with Ex.D6. In such view of the matter, if the present application is allowed, it will not cause any prejudice to the plaintiff. Therefore, this Court is inclined to allow this application.

9. However, the decisions relied on by the learned counsel appearing for the respondent/plaintiff are distinguishable on facts and hence, they will not be applicable to the facts of the present case.

10. Accordingly, this application is allowed. No costs.

Sd./-V.B.S.J

27.04.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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EVK 05/05/2022