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A. No.1239 of 2022
in
C.S.(Comm.Div)No.55 of 2021

SENTHILKUMAR RAMAMOORTHY, J

This application is filed to seek permission in relation to production of additional documents, which are listed in the schedule to the Judge's summons.

2. The applicant states that the suit was filed as a *quia timet* action on 08.09.2021. The documents proposed to be filed now are subsequent to the filing of the suit. It is also stated that these documents are relevant and, indeed, vital to the issues arising for consideration in the suit.

3. The respondent/defendant opposes the application and has filed a counter affidavit. The primary ground on which the application is opposed is that an application for amendment of the plaint was filed on 24.09.2021. The documents listed at Sl.Nos.3 to 10 of the schedule to the Judge's summons are prior to the application for amendment. Therefore, the respondent contends that Order XI Rule 1 of CPC becomes applicable and these documents should be construed as documents within the possession, power, control and custody of the plaintiff, at least when the amended plaint was filed. In support of these



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contentions, the respondent relies upon the judgment of the Hon'ble Supreme

Court in *Sudhir Kumar @ S.Baliyan v. Vinay Kumar 2021 SCC OnLine SC*

734. On such basis, the respondent submits that the documents which were in the possession of the applicant/plaintiff, when the amended plaint was presented, should not be permitted to be filed. In any event, the respondent states that the applicant/plaintiff has failed to establish a reasonable cause.

4. Order XI Rule 1(5) of CPC is applicable in respect of documents which were not filed along with the plaint in spite of being within the power, possession, control or custody of the plaintiff. As regards such documents, leave of the court under sub rule 5 is necessary and such leave is granted only if reasonable cause is established for non-disclosure along with the plaint. While the reason cited by the applicant/plaintiff for not filing the documents at the time of original filing of the suit is liable to be accepted, the documents at Serial Nos.3 to 10 of the schedule to the judge's summons are prior to the filing of the amended plaint. Therefore, the contention of the respondent/defendant that reasonable cause should be established is valid. Expressions such as reasonable cause, sufficient cause or just cause are used in order to provide the court with the measure of discretion necessary to deal with such applications. In this case, the pleadings are complete, but issues have not been framed.



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Therefore, the suit is at the pre-trial stage. The filing of these documents, at this juncture, does cause a degree of prejudice to the respondent and has the effect of protracting the proceedings to an extent. However, it should be balanced against the prejudice that would be caused to the applicant/plaintiff, if the applicant is not permitted to produce these documents. If such exercise is carried out, there is little doubt that greater prejudice would be caused to the applicant. At the same time, in view of the belated filing of this application, the applicant should be put on terms. The respondent/defendant states that costs if awarded may be directed to be paid for a charitable cause.

5. Accordingly, this application is allowed subject to payment of a sum of Rs.30,000/- (Rupees Thirty Thousand only) as costs to the Tamil Nadu Legal Services Authority, Chennai. The said sum shall be paid within a period of two weeks from the date of receipt of a copy of this order. The respondent/defendant is permitted to raise objections *inter alia* on grounds of admissibility, relevance and proof. The respondent/defendant is also permitted to file a statement of admission/denial in respect of the additional documents on or before 27.04.2022. List on 27.04.2022.

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12.04.2022



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26.11.2021