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A.No.2486 of 2022

in

C.S.No.453 of 2012

SENTHILKUMAR RAMAMOORTHY, J

This application is presented by the second defendant seeking permission to exhibit additional documents.

2. The cross-examination of DW1 was concluded and the suit is at the stage of examination of DW2. Learned counsel for the applicant states that the suit was instituted prior to the enactment of the Commercial Courts Act 2015. The written statement was filed along with an application to condone the delay. The delay in filing the written statement was condoned by order dated 30.07.2021. Learned counsel further states that these documents are material for purposes of defending the suit and could not be obtained earlier.

3. Learned counsel for the respondent/plaintiff opposes this application. He states that the suit is of the year 2012. The written statement was filed in 2016. He also pointed out that a question was put to DW1 in cross-examination with regard to the filing of documents along with



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the written statement, and that DW1 admitted that no document was filed with the written statement. Considering the fact that this is a commercial dispute, he states that reasonable cause has not been established.

4. In order to determine whether reasonable cause is established, the stage of the suit is of particular relevance. In this case, the suit is at the stage of examination of DW2. Therefore, the application has certainly been filed belatedly.

5. The reasons stated in the affidavit in support of this application that the documents were traced recently are not entirely convincing. At the same time, it should be recognized that this is a Court of first instance, and therefore, the last opportunity for parties to adduce evidence except in the limited circumstances permitted under Order 41 Rule 27 CPC. If the applicant/second defendant is not permitted to exhibit these documents, great prejudice would be caused to the said party.

6. Accordingly, this application is allowed on the following terms:

- (i) the applicant/second defendant
shall pay costs of Rs.25,000/- (Rupees Twenty



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Five Thousand only) to the Tamilnadu State Legal Services Authority, High Court Building, Chennai, within a period of two weeks from the date of receipt of a copy of this order.

(ii) DW2 shall be available for examination between 08.08.2022 and 12.08.2022. The examination of DW2 shall be concluded in full on or before 12.08.2022.

(iii) The respondent/plaintiff is permitted to file an affidavit of admission/denial in respect of these additional documents and also raise objections in course of trial *inter alia* on grounds of admissibility, relevance and proof.

Learned counsel for the plaintiff states that the issues framed may require re-casting in view of the additional documents. List on 03.08.2022.

28.07.2022

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SENTHILKUMAR RAMAMOORTHY, J

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A.No.2588 of 2022

in

C.S.No.735 of 2019

28.07.2022