



O.A.No.227 of 2022
and E.L.P.No.4 of 2019

S.S.SUNDAR, J.

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This Original Application is filed by the election petitioner to issue subpoena to the Registrar of Companies, Chennai, to appear in person to depose evidence and produce the original documents namely (i) Form 16 of Loan sanction letter dated 11.02.2019 to M/s.Vijayanth Developers Pvt. Limited which is part of record in Form No.CHG-1, (ii) Company Master Data of M/s.Vijayanth Developers Pvt. Limited during the period of 18.02.2019 and (iii) Certificate of registration of charge dated 20.03.2019 of M/s.Vijayanth Developers Pvt. Limited in Election Petition No.4 of 2019 on the side of election petitioner.

2. The petitioner filed the election petition to declare the election of 3rd respondent as returned candidate on 23.05.2019. The election petition is filed on the ground that 3rd respondent has given false election affidavit by suppressing his assets and liabilities and indulged in corrupt practice. After examining two witnesses, the petitioner intends to call upon the Registrar of Companies as his 3rd witness in the trial. The purpose of examining the Registrar of Companies appears to prove documents namely



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Exs.P.15, P.17 and P.19. It is admitted that these records are public documents and the witness, who is sought to be summoned is the custodian of these documents.

3. A detailed counter affidavit is filed by 3rd respondent, who opposed this application. From the counter affidavit, the objection of 3rd respondent is twofold. Since the documents namely Exs.P.15, P.17 and P.19 are public records, referring to Section 74 of Indian Evidence Act, 1872, it is submitted that the documents enjoy the presumption of genuineness under Section 79 of Indian Evidence Act, 1872. It is further contended that the examination of 3rd witness, namely, the Registrar of Companies is not necessary. The third respondent also relied upon Section 397 of the Companies Act, 2013, to support his arguments that this ardent task of the petitioner in summoning the Registrar of Companies is a futile exercise and by examining the witness the precious time and resources of the Court will be wasted.



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4. The second contention of the learned Senior Counsel for 3rd respondent is that documents were marked with objections on the ground that they were not part of the pleadings in the election petition. The learned Senior Counsel for 3rd respondent elaborated the contention by referring to paragraph no.6 of the election petition. Though the petitioner has stated that the 3rd respondent has suppressed his assets in the form of shares and its financial values of his share holding in M/s.Vani Fabrics Pvt. Limited, in which 3rd respondent was Director having share of 16.67% in the said company, it is pointed out that the Registrar of Companies is not called upon to prove any documents relates to M/s.Vani Fabrics Pvt. Limited but in connection with some other company the suppression of which is not pleaded in the petition.

5. It is admitted that the election petitioner has not whispered about any suppression regarding assets or interest of the returned candidate namely 3rd respondent in any other company. The learned counsel for the election petitioner pointed out that the general allegations of suppression is a main ground and therefore, the petitioner even without



pleading about assets or interest of 3rd respondent in a different company, it is open to him to mark documents to prove suppression. The documents namely Exs.P.15, P.17 and P.19 are marked already. In such circumstances, the question whether the documents can be admitted in evidence without pleading is a matter which can always be considered at the relevant stage of the proceedings.

6. The application to issue subpoena to the Registrar of Companies need not be considered on the basis of inadmissibility of the documents which are already marked. Therefore, this Court is not inclined to appreciate the arguments of the learned Senior Counsel for 3rd respondent opposing this application.

7. The learned Senior Counsel for 3rd respondent pointed out the fact that the learned counsel for the election petitioner is now appointed as Additional Advocate General. It may be an embarrassment to the learned counsel for the petitioner to conduct the case after assuming office as Additional Advocate General of the ruling Government. However,



it is up to him as it is a privilege of an Advocate. The learned counsel for the petitioner also pointed out that the Government has given permission to him to appear in this case. This Court is unable to find any legal obstacle or legal bar for the Additional Advocate General to prosecute this case.

8. For the reasons stated above, this Original Application is ordered as prayed for.

9. Issue subpoena to the Registrar of Companies, Chennai, returnable by 12.10.2022.

14.09.2022

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