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A.No.2466 of 2022
in C.S (Comm. Div.) No.82 of 2021

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M.SUNDAR.J.,

In these proceedings parties are referred to by their respective ranks in the main suit for the sake of convenience and clarity.

2. Read this in conjunction with and in continuation of earlier proceedings made in the captioned application in the previous listing on 26.09.2022, same set of learned counsel who were before this Commercial Division on 26.09.2022 are before this Commercial Division today also. Besides counsel before this Commercial Division in the previous listing, Mr.M.B.Raghavan of M/s.M.B.Gopalan Associates (Law Firm), III Floor, Catholic Centre, Armenian Street, Chennai - 600 001, who is before this Commercial Division, submits that he has instructions to enter appearance on behalf of second defendant (United India Insurance Co. Ltd.). To be noted, there is no dispute that 120 days from the date of service of suit summons on second defendant elapsed and therefore, the second defendant



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forfeited its rights to file written statement. The second defendant has already been set *ex parte*. Learned counsel submits that he will take out an application for setting aside the order setting the second defendant *ex parte*. However, that will not detain or deter this Commercial Division from proceeding with the captioned application as the second defendant does not really have a say at least as far as captioned application is concerned. Even if the second defendant takes out an application for setting aside the order setting the second defendant *ex parte* and if the prayer is acceded to, only limited rights will enure to the second defendant. However, it is not necessary for any elaboration on the same in this order.

3. Reverting to captioned application, the same has been taken out under Order XI Rule 14 of 'The Code of Civil Procedure, 1908 (Central Act No.V of 1908)' ['CPC' for the sake of brevity] with the prayer for production of 8 documents. There is no disputation, contestation or disagreement before this Commercial Division that the plaintiff has since produced copies of eight documents to the first defendant and learned counsel for first

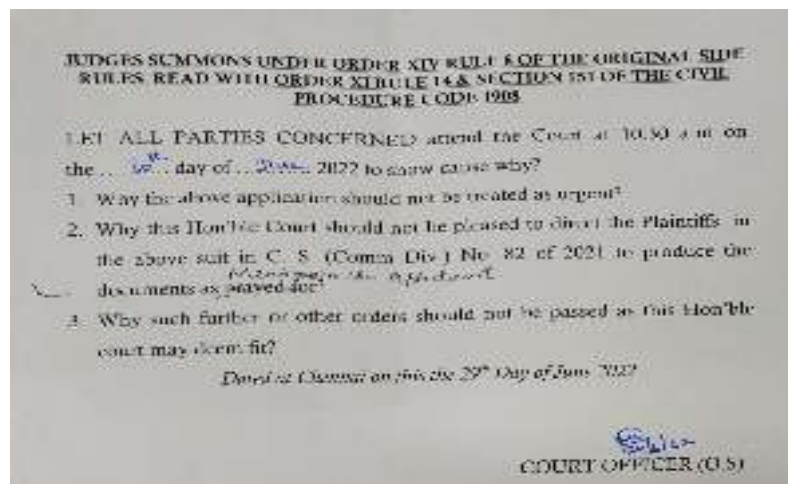


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defendant submits that captioned application has served its purpose, however, rights of the first defendant qua 8 documents may please be preserved is his further say.

4. This draws the curtain on the captioned application. However, before concluding, this Commercial Division deems it appropriate to set out that in applications of this nature, the documents that are sought to be produced have to be set out in the Judges' summons and not by way of a prayer saying that 'documents as mentioned in the affidavit'. A scanned reproduction of the relevant portion of the Judges' summons is as follows:





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5. To be noted, vide *M.Sampath Vs. State of Tamil Nadu rep. by Secretary, Home Dept. Madras and another* reported in 1997-1-L.W.283, this Court has held that an affidavit need not even contain the prayer. Registry will do well to examine these aspects of the matter in the days to come.

In the light of the narrative thus far, captioned application is disposed of as closed. There shall be no order as to costs.

18.10.2022

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