



C.R.P(PD)No.1902 of 2020
and CMP.No.11643 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD).No.1902 of 2020

and

CMP.No.11643 of 2020

M/s.CAABA SOLUTIONS (P) Ltd.,
No.103, Champak Villa,
Opp. Hockey Grounds, Opp.Heritage Super Market,
Shanthi Nagar, Vijay Nagar Colony,
Hyderabad – 500 028,
Rep. By its Director,
Mr.K.MD.Shakeel Safi

..Petitioner

Vs.

1.M/s.AKMG ALLOYS PRIVATE LIMITED,
No.72, West Car Street, Dindigul – 624 001,
Rep. By its Director, Mr.G.V.Kumar

2.M/s.SHAIDA INTERNATIONAL COMPANY,
No.73, V.V.Koil Street, Taramani,
Velacherry, Chennai – 600 013,
Rep. By its Proprietor, Mr.A.M.Geni

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to set aside the order dated 07.01.2020 made in IA.No.2777 of 2018 in OS.No.5219 of 2016 by the XIII-Assistant City Civil Judge, Chennai.



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C.R.P(PD)No.1902 of 2020
and CMP.No.11643 of 2020

For Petitioner : Ms.R.J.Radhika
for Mr.P.Ravichandran
For Respondents : Mr.Aravind Subramaniam for R1

ORDER

Aggrieved by an order, allowing production of secondary evidence, the 2nd defendant in OS.No.5219 of 2016 is on revision.

2.The suit is one for recovery of money. The plaintiff sought to produce copies of certain documents. This was opposed by the learned counsel for the defendants. Thereafter, an application was taken out by the plaintiff in IA.No.2777 of 2018, seeking permission to produce secondary evidence. The said application was resisted by the defendants, contending that the plaintiff has not satisfied any of the requirements under Section 65 of the Evidence Act, which enables the plaintiff to produce secondary evidence under certain circumstances. The Trial Court, however, allowed the application and permitted the plaintiff to produce those documents namely, Exs.A1 to A5 and A7.

3.Ms.R.J.Radhika, learned counsel appearing for the petitioner



C.R.P(PD)No.1902 of 2020
and CMP.No.11643 of 2020

WEB COPY

would submit that while Document Nos.4 and 5, which are E-mail communications, the plaintiff has not produced a certificate under Section 65-B of the Evidence Act. As regards Document No.1, which is a memorandum of understanding, it is a photo copy and in the absence of compliance with Section 65 to justify production of secondary evidence, the same cannot be received in evidence. In respect of Document No.2, the learned counsel would submit that it is a letter addressed by the plaintiff to the 1st respondent, and the 2nd respondent has nothing to do with the same. As for as Document Nos.3 and 7 are concerned, the learned counsel would submit that in the absence of any justification of production of a copy, the same cannot be received.

4.Contending contra, Mr.Aravind Subramanian, learned counsel for the 1st respondent / plaintiff would submit that since the petitioner is not a party to the memorandum of understanding, which is sought to be marked as Ex.A1, she cannot have any objection to the same. As far as the requirement of certificate under Section 65-B, the learned counsel would submit that he will produce it and the Trial Court itself has stated that the



C.R.P(PD)No.1902 of 2020
and CMP.No.11643 of 2020

WEB COPY

certificate has to be produced. As regards the other documents, the learned counsel would submit that those documents being letters and communications from the Bank, the plaintiff would have only copies of the same and not the originals. I have heard the rival submissions.

5.While the contention of the learned counsel for the 1st respondent is acceptable in respect of the other documents, as far as the 1st document namely, memorandum of understanding is concerned, I do not think, the plaintiff has made a case for its admission. The affidavit that has been filed in respect of IA.No.2777 of 2018 is bereft of any reason as to why the plaintiff should be allowed to produce secondary evidence of the document. It is a memorandum of understanding entered into between the plaintiff and the 1st defendant. It is now sought to be produced in the lis and used against the 2nd defendant. The 1st defendant has remained exparte. The affidavit is silent with reference to the custody of the original. The plaintiff has not stated that the original had gone missing or it is with the 1st defendant. Not even one of the provisions of Section 65 have been satisfied.

6.Therefore, I do not think, the Trial Court was right in allowing



C.R.P(PD)No.1902 of 2020
and CMP.No.11643 of 2020

WEB COPY

marking of a photo copy of the memorandum of understanding dated 28.07.2015. Hence, this civil revision petition is allowed, the order in IA.No.2777 of 2018 is partially set aside. The document namely, the memorandum of understanding dated 28.07.2015 will stand rejected. It is open to the plaintiff to make out a proper application, satisfying the provisions of Section 65 to enable production of photo copy of the documents. No costs. Consequently, connected miscellaneous petition is closed.

02.02.2022

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Index:No
Internet:Yes
Speaking

To-

The XIII-Assistant City Civil Court,
Chennai.



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C.R.P(PD)No.1902 of 2020
and CMP.No.11643 of 2020

R.SUBRAMANIAN, J.

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C.R.P(PD).No.1902 of 2020
and
CMP.No.11643 of 2020

02.02.2022