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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.01.2022

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD) No. 1729 of 2021
and
C.M.P.No. 13451 of 2021

1. M/S. Chennai Packers And Movers,
Represented by its Sole Proprietor : Mr. T.Kumar,
No.25/1 J.P.R.Palace,
Dr.Ambethkar Nagar,
100 Feet Road,
Kolathur, Chennai - 99.
2. M/S.CNI Logistics Private Limited,
Represented by its Managing Director: Mr. Kumar,
No.25/1 JPR Palace,
Dr. Ambedkar Nagar,
100 Feet Road,
Kolathur, Chennai - 99.Petitioners

Versus

M/S. The Supreme Industries Limited
Represented by its Authorised Signatory : L. Balaji
No.36, 2nd Floor, 1st Main Road
C.I.T. Nagar, Nandanam,
Chennai - 600 035. ...Respondent

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to allow the above C.R.P. by setting aside the order and decreetal order dated 22.01.2020 passed in MEMO in S.R.No.2140 of 2020 in O.S.No.3162 of 2014 on the file of VIII Assistant City Civil Judge at Chennai and dismiss the MEMO in S.R.No.2140 of 2020 in O.S.No.3162 of 2014.

For Petitioners : Mr. George Graham

For Respondent : Mr. S.Elumalai
for M/s.Devadasan & Sagar

ORDER

The Revision is directed against an order of the Trial Court made on a Memo in SR.No. 2140 of 2020 in O.S.No. 3162 of 2014. The said suit has been filed by the respondent herein for



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recovery of money. The defendants 1 and 2 are resisting the suit raising various contentions. The 1st defendant is a proprietary concern and the second defendant is a private limited company. The 1st defendant had authorised its Business Development Manager one S.Madhu (son of S.Sundram) to adduce evidence on behalf of him by letter dated 30.08.2017. Pursuant to the same, the said S.Madhu was examined-in-chief and was cross examined partially. Thereafter, he did not appear. Claiming that he had left the services of the 1st defendant, an application was taken out by the defendants to eschew his evidence. The same came to be dismissed by the Trial Court. In the revision against the said order, the learned counsel for the plaintiff had submitted that he has completed the cross-examination and there was no necessity for further cross-examination. Recording the statement, this Court dismissed the Civil Revision Petition. The effect is, the evidence of the said S.Madhu as D.W.1 on behalf of the 1st defendant is on record. Thereafter, the defendants filed I.A No. 1 of 2019 to re-open the evidence. The same came to be allowed. Thereafter, the Managing Director of the 2nd defendant, one Mr. Kumar, who also happens to be the proprietor of the 1st defendant filed a proof affidavit. This was objected to by way of the memo. The learned Trial Judge accepted the memo and debarred the said Kumar from adducing evidence.

2. I have heard Mr. George Graham, learned counsel appearing on behalf of the petitioners and Mr. S.Elumalai, learned counsel appearing on behalf of the respondent. Mr. George Graham, learned counsel for the petitioners would submit that the Court cannot preclude the 2nd defendant from letting in evidence. The authorisation was given to Madhu only to lead evidence on behalf of the 1st defendant. Even in the proof affidavit of Madhu, it has been stated that the 2nd defendant is a separate legal entity. Therefore, merely because the 1st defendant had authorised Mr.Madhu to lead evidence and the evidence has been completed, the Court cannot prevent the Managing Director of the 2nd defendant from deposing on behalf of the 2nd defendant.

3. Mr. S.Elumalai, learned counsel would point out that the proof affidavit of Mr. Kumar filed as that of D.W.2. reads as if he is deposing for both the defendants. That cannot be done.

4. While it will be open to Mr. Kumar to depose as D.W.2, his evidence would be confined only to the claim of the second defendant and he cannot depose on behalf of the 1st defendant, since he had already authorised S. Madhu to depose on behalf of the 1st defendant. Therefore, the Revision is allowed. Mr. Kumar can be examined. The proof affidavit of Mr.Kumar will be accepted as evidence on behalf of D.W.2 and he can be cross examined as D.W.2 and the Managing Director of the 2nd defendant



company. The order of the Trial Court is set aside with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The VIII Assistant City Civil Judge,
Chennai.

Copy To:

The Section Officer,
V.R Section, High Court,
Madras-104.

+1cc to Mr.Devadason and sagar, Advocate, S.R.No.3524

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MT (CO)
SB (10/02/2022)