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A.No.3496 of 2022
in
C.S.No.154 of 2016
(Comm. Suit)

M.SUNDAR, J.,

This order will now dispose of the captioned application.

2. In this order, parties shall be referred to by their respective ranks in the main suit for the sake of convenience and clarity.

3. Ms.Shubharanjani Ananth, learned counsel on record for sole plaintiff, Ms.Anila .R, learned counsel representing Mr.S.R.Sundar counsel on record for first defendant and Ms.Pavithra .V, learned counsel of M/s.Pass Associates (Law Firm) for second defendant are before this Commercial Division.

4. Owing to the limited scope of captioned application, short facts will suffice. Plaintiff has laid the captioned money suit owing to repudiation of insurance claim qua consignment that was imported by plaintiff. Therefore, plaintiff is importer / consignee, first defendant is



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insurance company and second defendant, this Commercial Division is informed is 'C & F Agent' ['C & F Agent' stands for 'Clearing and Forwarding Agent']. Owing to the limited scope of captioned application, it is not necessary to be detained by the facts any further.

5. Captioned application has been taken out by plaintiff with a prayer for letting in secondary evidence qua two documents namely, Bill of Entry dated 26.05.2013 and authorization issued by DGFT (Director General of Foreign Trade) dated 24.06.2013 (plaint document Nos.7 and 9).

6. When secondary evidence is let in *inter alia* Sections 63 and 65 of 'the Indian Evidence Act, 1872 (1 of 1872)' [hereinafter 'Evidence Act' for the sake of convenience and clarity] come into play. Principles in this regard have been elucidatively explained by Hon'ble Supreme Court in ***Dhanpat Vs. Sheo Ram (deceased) & others*** reported in **(2020) 16 SCC 209**. Further more, this Commercial Division is informed that trial is underway before learned 'Additional Master-II' ['AM-II'].



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7. As AM-II does not have adjudication powers, ideal course to adopt in such cases would be to mark the documents subject to objections i.e., recording objections, so that the objections can be dealt with by this Commercial Division later. Be that as it may, in the case on hand, the objection of first defendant insurance company is that the plaintiff has not demonstrated as to in whose possession originals are. As regards the objection of second defendant with regard to plaint document No.7, Bill of Entry was returned to plaintiff and with regard to plaint document No.9, it is not in the possession of second defendant. Be that as it may, the prayer makes interesting reading. It reads as follows as can be culled out from Judge's summons:

'To pass an order allowing the applicant/plaintiff to lead secondary evidence in respect of the Exhibit Nos.P7 and P9.'

8. When documents have already been marked as exhibits, a prayer to let in secondary evidence qua those documents does not arise. This Commercial Division is informed that exhibit numbers were assigned by AM-II {without marking in a manner known to law} even before the document was marked in a manner known to law. Therefore, this Commercial Division treats the prayer as one qua plaint document Nos.7 and 9.



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9. Learned counsel for plaintiff points out that the deponent as described in the contents of counter affidavit as first defendant and the signatory are different. In the light of the manner in which the captioned application is being disposed of and the nature of the order that is being passed, in this case it is ignored making it clear that this will not serve as a precedent. Rights and contentions of plaintiff in this regard are preserved.

10. In the light of the narrative thus far, captioned application is ordered as prayed for albeit with a further directive that objections of defendants 1 and 2 shall be recorded by AM-II and plaint document Nos.7 and 9 shall be marked as exhibits subject to such objections. There shall be no order as to costs.

**08.11.2022
(1/2)**

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