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A Nos.4109, 4110 and 4111 of 2021
and
C.S.No.865 of 2014

N.ANAND VENKATESH.,J

These applications have been filed by the Plaintiff to re-open the plaintiff side evidence, to recall PW1 and to receive 15 additional documents.

2. The applicant has filed the present suit seeking for the relief of damages/ compensation from the respondent. The suit was filed in the year 2014. Initially, the respondent / defendant was set exparte and subsequently, based on the application filed by the respondent, the order setting the respondent exparte was set aside. Thereafter, the respondent filed their written statement along with documents.

3. The suit was transferred to the file of the commercial division and the jurisdiction was determined by an order dated 14.11.2018.



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4. The case was sent to the learned Additional Master IV for recording evidence through an order dated 06.08.2019. Thereafter, proof affidavit was filed and Ex.P1 to P1205 were marked. PW1 was cross-examined and the evidence on the side of the plaintiff was concluded on 27.09.2019. An endorsement was made on the side of the defendant that they have no oral evidence. The matter was sent back to the Court and written arguments were also filed on both sides and the suit was at the stage of oral arguments.

5. It is at this point of time, the present applications came to be filed by the plaintiff on 10.11.2021 to re-open the plaintiff side evidence, recall PW1 and to file 15 additional documents.

6. The respondent / defendant has opposed this application mainly on the ground that the documents that are sought to be brought in as additional documents were very much available even at the time of filing the suit and no convincing reason has been stated for filing the additional documents at the fag end of the



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proceedings. It is further stated that 1205 documents have already been marked and the witness has been cross-examined in full and the attempt made by the applicant to bring in some more documents is only with a view to pull the loop holes and to further drag on the proceedings.

7. Heard Mrs.Chitra Sampath, learned Senior counsel appearing on behalf of the applicant and Mr.Shivakumar and Mr.Suresh, learned counsel appearing on behalf of the respondent.

8. The suit was at the stage of oral arguments and at this stage, the present applications have been filed by the plaintiff. It is an admitted case that the documents that are sought to be brought in by the applicant pertain to the period between 2012 to 2014 and these documents were in existence even before the suit was filed. It is also seen that the applicant has filed nearly 1205 documents already and it has been marked and the witness has also been cross-examined by the other side. Therefore, unless, this Court is able to find strong and convincing reasons as to why the applicant was not



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able to file these documents at the earliest point of time, this Court cannot entertain such an application at the fag end of the proceedings.

9. The reasons assigned by the applicant is that the additional documents were disorganised / misplaced during transportation and relocation of the documents after the amalgamation of the plaintiff company with its transferee company and when the documents were shifted from Mumbai to Umbergaon at Gujarat. That apart, the applicant has also stated that several key employees who were handling these documents resigned and therefore, tracing the relevant documents became a very difficult task. It is further stated by the applicant that these are very vital documents, which will clearly prove the case of the plaintiff and justify their claim for damages / compensation.

10. The evidence on the side of the applicant / plaintiff was concluded on 27.09.2019 and the matter was sent back to this Court by the learned Additional Master No.IV on 13.11.2019. The matter



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was posted for oral arguments on 27.01.2020. Thereafter, the Court proceedings were disrupted from the end of March 2020 due to the pandemic situation. The application has been filed on 10.11.2021 when the Court proceedings started getting active.

11. The reasons that have been assigned by the applicant does not seem to be without a reasonable cause. It is true that the applications came to be filed during the fag end of the proceedings. However, delay by itself cannot be a ground to reject the applications, if the delay is properly explained.

12. This Court wanted to convince itself with regard to the importance of the documents that are sought to be brought in by the applicant / plaintiff in order to ascertain as to whether the plaintiff is attempting to drag on the proceedings by filing frivolous applications. The documents in question are sanction orders / payment advise that was received from the respondent and the copies of the cheques that were issued by the respondent to the applicant and the correspondence that took place between the



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parties. The documents that were already marked were predominantly invoices apart from some correspondences that took place between the parties and the tender.

13. By virtue of the additional documents, the plaintiff is trying to establish the fact that the respondent / defendant had waived their right to deduct the security deposit or to impose liquidated damages or deduct the amounts from the future invoices, by virtue of refunding the security deposit on various dates and on various occasions. Thereby, the applicant wants to substantiate that the respondent has not incurred any damage and there was no reasonable ground to make deductions.

14. In the considered view of this Court, the documents that are sought to be relied upon as Additional documents are important documents that will substantiate the claim made by the plaintiff. Therefore, these documents cannot be termed as inconsequential and these applications cannot be branded as frivolous ones.



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15. While dealing with applications of this nature, this Court has to necessarily balance the rights of the parties with the available procedure. It is true that the procedure before the Commercial division must be strictly complied with. However, such compliance cannot be done in a mechanical fashion by depriving the vital rights of the parties to substantiate the claim or to defend the same. This Court finds that the applicant has given a reasonable cause by explaining the delay and also the importance of the additional documents to substantiate the claim.

16. In view of the above discussion, this Court is inclined to allow all these applications. However, considering the stage at which these applications came to be filed, this Court wants to impose cost on the applicant. In the result, all these applications are allowed subject to the condition that the applicant pays a cost of Rs.25,000/- (Rupees Twenty five thousand only) to the defendant on or before 21.01.2022.



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