



**Application Nos.4632 to 4634 of 2021**  
**in C.S.No.839 of 2007**

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**N.ANAND VENKATESH,J.**

These applications have been filed by the defendants to reopen the evidence on the side of the defendants, to recall DW-1 and for reception of 16 additional documents on the side of the defendants.

2.Heard Mr.K.Bijai Sundar, learned counsel for the applicant/defendant and MV.P.Raman, learned counsel for the respondent/plaintiff.

3.The respondent has filed the above suit against the defendants for recovery of money along with interest. This suit was filed in the year 2007 and after the completion of the trial, the suit was at the stage of final arguments. At this stage, the defendants have filed the above applications for reopening the evidence on the side of the defendants, for recalling DW-1 and for reception of 16 additional documents.

4.The defendants have already marked Exhibits D-1 to D-44. The defendants earlier filed applications in A.Nos.2660, 2661 and 2662 of 2021 with almost a similar prayer and the only difference was that they wanted to bring in two additional documents at that point of time. These applications came to be dismissed by an order dated 17.08.2021 and the main suit itself was directed to be posted for final arguments. It is at this stage, the present applications came to be filed by the defendants.



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5.The justification that has been given by the defendants for filing these applications is that there is a close nexus between the two lease agreements and two hire purchase agreements and that the plaintiff has attempted to distort the entire facts. It is further stated that the documents that are sought to be brought in by the defendants will establish that the plaintiff is not entitled for the huge amount claimed by them in the suit running to nearly rupees two crores and their own statement of accounts will show that the balance amount payable under the two hire purchase agreements is much lesser than what is claimed in the suit.

6.The applicants are duty bound to explain as to why the proposed additional documents were not filed at the earliest point of time. This is more so since the trial has been concluded and the suit is at the stage of final arguments. A suit before the Commercial Court has to be taken on a fast track lane and every time an application is filed and which will delay the further progress of the suit, the Commercial Division has to satisfy itself that there is a justifiable cause to entertain such an application. The application cannot be dealt with in a mechanical fashion and that will defeat the very purpose of constituting the Commercial Division under of the Commercial Courts Act.

7.On carefully going through the affidavit filed in support of the applications, there is not even a whisper on the side of the applicant as to why it took such a longtime for the applicant to move these applications. The delay is exorbitant



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and unless the delay is explained, the applications are bound to be rejected on the ground of delay alone.

8. Even on the merits of the case, there are totally 16 documents that are sought to be brought in by the defendants. Out of these documents, document nos. 5 to 14 pertains to Higher Purchase Agreement no.67. When the earlier applications were filed in Application Nos.2660, 2661 and 2662 of 2021 and the two additional documents that were sought to be brought in, was dealt with by this Court, the following finding was given by this Court.

7. As already pointed out, the suit is one for recovery of money based on the Hire Purchase Agreement. The fact whether the conversion of this agreement into an Hire Purchase Agreement was with the consent of the defendant or not, has to be decided only in the suit. The only purpose, according to the defendant, of production of these documents is to show the existence of another Agreement namely Hire Purchase Agreement No.67. By demonstrating the existence of such an agreement, even it is taken into consideration, I do not think that the defendant would clearly succeed in the suit. The existence or otherwise of another agreement bearing Hire Purchase Agreement No.67, is not going to in any manner affect the case of the parties to the suit. As rightly pointed by Mr.V.P.Raman, by producing these documents the defendant is, in fact, attempting to withdraw certain admissions made in the written statement filed in the suit which cannot be allowed. I therefore do not



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think that these documents are either necessary or proper documents for determining the controversy in the suit. Hence these applications are dismissed.

9.The above finding which pertained to Hire Purchase Agreement No.67, will equally apply insofar as Document Nos.5 to 14 which relates to the present applications. That apart, certain answers that were given by DW-1 in the course of cross examination pertaining to Hire Purchase Agreement No.67, will be watered down if these documents are brought in at this stage.

10.The other documents viz., additional document Nos.1 to 4, 15 and 16, relates to the two Lease Agreements that formed part of the transactions in the present suit. The parties have sufficiently let in evidence on this issue. There is absolutely no justification as to why the evidence must be once again reopened on the side of the defendants to permit these additional documents. This is more so since the defendants did not explain anywhere in the affidavit as to why these documents were not produced/filed during the pendency of this suit for the last 14 years.

11.The Commercial Division cannot entertain applications without a justifiable cause particularly when it has been filed with enormous delay. This Court does not find any justification to entertain these applications at this stage of the suit. It is quite surprising that the defendants have chosen to file the second set of applications



within a short span after the first set of applications were dismissed in August 2021.

There are absolutely no merits in these applications and these applications have been filed only to drag on the proceedings.

11. In the result, all the applications are dismissed and considering the facts and circumstances of the case, the applicant/defendant is directed to pay costs of a sum of Rs.25,000/- [Rupees Twenty Five Thousand Only] to the respondent/plaintiff on or before **21.01.2022.**

**12.01.2022**  
**1/2**

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Internet: Yes



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**N.ANAND VENKATESH, J.**

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Pre-Delivery Common Order  
in Application Nos.4632 to 4634 of 2021  
in C.S.No.839 of 2007

Orders Reserved on 10.01.2022

Pronounced on 12.01.2022