



A.No.5450 of 2022
in C.S.No.256 of 2013

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S.SOUNTHAR,J.

The present application is filed by the 2nd defendant in the suit seeking leave of the Court to file additional documents as mentioned in the Judges summons and to receive the same.

2. The respondents 1 to 3/plaintiffs have filed the present suit against the 4th respondent and the applicant herein for the relief of specific performance of the sale agreement dated 30.06.2008 entered into between the respondents 1 to 3/plaintiffs and the 4th respondent/1st defendant with an alternative prayer for return of advance amount. The respondents 1 to 3 also sought for injunction restraining the 4th respondent and his men from encumbering the suit schedule property in any manner, in favour of the third parties.



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3. According to the respondents 1 to 3/plaintiffs, they entered into suit sale agreement dated 30.06.2008 with the 4th respondent/1st defendant for purchase of the suit schedule mentioned property for a value of Rs.4 crores. It was also stated in the plaint that the respondents 1 to 3 have paid an advance amount of Rs.24,50,000/- on the date of agreement and the balance was agreed to be paid within 12 months. It was further alleged that as per Clause 4 of the said agreement, the respondents 1 to 3 had paid a sum of Rs.1.28 crores on 04.08.2008 to the 4th respondent herein and on such payment, the possession of the suit property was delivered to the respondents 1 to 3. It was also stated by the respondents 1 to 3 that though they were ready to pay the balance sale consideration and complete the sale transaction, it was postponed by the 4th respondent under one pretext or the other. When the respondents 1 to 3 met the 4th respondent in person and enquired about the same, the 4th respondent informed the respondents 1 to 3 about the pendency of certain arbitration proceedings between the 4th respondent/1st defendant and applicant herein/2nd defendant. It was further alleged that the 4th respondent requested for some time to negotiate with the applicant and settle the matter. It was further alleged in the plaint that later



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on, the respondents 1 to 3 acquired knowledge about the Memorandum of Understanding entered into between the 4th respondent and the applicant herein dated 31.03.2007 agreeing to procure 250 acres of land in and around Sriperumbudur Village. It was further alleged that the applicant herein moved an application under Section 9 of the Arbitration and Conciliation Act, 1996 and this Court was pleased to appoint an Arbitrator to resolve the disputes between the applicant and the 4th respondent herein and the Arbitrator appointed by this Court passed an order of interim injunction as well as attachment of all the properties belonging to 4th respondent herein till the entire dues as per the award is paid in favour of the applicant. On acquiring knowledge about the said order, the respondents 1 to 3 had filed applications in A.No.3552 of 2009 and A.No.2181 of 2009 for impleading and also to vacate the interim injunction and no orders had been passed in those applications. It was further submitted by the respondents 1 to 3/plaintiffs that the 4th respondent and applicant herein had gone before the Arbitrator and had filed a joint memo for passing an award in the form of money decree against the 4th respondent and consequently, an award was passed on 19.12.2011. The respondents 1 to 3 claimed the award passed



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against the 4th respondent and in favour of the applicant herein was a collusive one. On these pleadings, he filed the above suit for the aforesaid relief.

4. The 4th respondent filed a written statement and also additional written statement and resisted the suit.

5. The applicant herein on his part filed his written statement *inter alia* contended that the respondents 1 to 3/plaintiffs were aware of the dispute between the applicant and the 4th respondent. The applicant denied the allegation in the plaint that the respondents 1 to 3/plaintiffs were in possession of the suit property. The applicant also disputed the territorial jurisdiction of this Court in his pleadings. The applicant herein also referred to the arbitration proceedings between the 4th respondent and himself and also attempt made by the respondents 1 to 3 to get themselves impleaded in the application filed under Section 9 of the Arbitration and Conciliation Act, 1996 before this Court etc., in his pleadings. The applicant herein further contended that alleged suit sale agreement dated 30.06.2008 was an

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unregistered document and the same was not enforceable in law. It was also alleged that the receipts allegedly issued by the 4th respondent herein in favour of respondents 1 to 3 are all concocted documents.

6. The trial in the matter is already over and the matter is posted for argument of the respective counsel. It is also stated that the argument on the part of the respondents 1 to 3/plaintiffs was already over and the learned counsel for the applicant/2nd defendant commenced his arguments. At that stage, this application was filed by the applicant seeking leave of the Court to produce additional documents.

7. The learned counsel for the applicant submitted that the documents now sought to be produced are all relating to the earlier proceedings between 4th respondent and applicant. The learned counsel for the applicant submitted that the respondents 1 to 3/plaintiffs in their pleadings specifically admitted their knowledge about the earlier proceedings between 4th respondent and applicant. It was also stated that the applicant also in his pleadings referred about the earlier proceedings under Section 9 of the



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Arbitration Act and also the arbitral proceedings in his pleadings extensively. The learned counsel further submitted that the documents relating to earlier proceedings between 4th respondent and applicant were not produced before this Court at the time of trial and at the time of arguments, it was realised that those documents are vital documents to prove the case of the applicant and hence, the present application is filed seeking leave of the Court to produce those documents by filing additional affidavit.

8. The learned counsel for the respondents 1 to 3/plaintiffs vehemently opposed the application on the ground that all the documents now sought to be produced by the applicant were in possession of the applicant even at the time of trial.

9. The learned counsel for the respondents 1 to 3 contended that when the applicant referred about the earlier proceedings between 4th respondent and himself in his pleadings, he ought to have produced the documents relating to the earlier proceedings along with his pleadings or atleast at the



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time of trial. The learned counsel submitted that having failed to produce the documents at the time of trial, it is not open to the applicant to maintain this application, when the matter is posted for arguments, especially after completion of the arguments of the plaintiff and after completion of the applicant's arguments in part. The learned counsel relied on the decision of the Hon'ble Apex Court in ***Bagai Construction Thr. Its Proprietor Mr. Lalit Bagai vs. Gupta Building Material Store*** reported in ***MANU/SC/0195/2013 = (2013) 14 SCC 1*** for the proposition that the party who wants to produce additional documents at a later point of time should satisfy the Court about the existence of sufficient reasons for his failure to produce the documents at the time of filing his pleadings.

10. The perusal of the pleadings of the parties, affidavit and counter affidavit filed in this application would suggest that both the parties referred to the earlier proceedings between the 4th respondent herein and the applicant in their respective pleadings. However, at the time of trial, both the parties failed to produce documents relating to earlier proceedings before the Court. The trial in the suit is already over and the suit is posted



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for arguments of the respective parties. It is not in dispute that the learned counsel for the plaintiff already made his arguments and the learned counsel for the applicant/2nd defendant commenced his arguments and at that stage, the present application is filed seeking leave of the Court to produce additional documents which were referred to in the pleadings.

11. The learned counsel for the respondents 1 to 3 vehemently contended that the party who wants to produce additional documents must get leave of the Court under Order 9 Rule 8 of the Original Side Rules, satisfying the Court with regard to the existence of sufficient reason for his failure to produce those documents at the time of filing his pleadings or atleast at the time of trial.

12. The reading of the affidavit filed in support of the present application would suggest that the applicant has not given any reason for his failure to produce the documents now sought to be produced at the time of filing of his pleadings or atleast at the time of trial. It is not in dispute that the applicant had knowledge of the earlier proceedings between 4th



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respondent and applicant, even in his written statement he referred to the earlier proceedings between 4th respondent and applicant. But however, for the reason best known to him, he failed to produce the documents relating to the earlier proceedings along with his pleadings and also at the time of trial.

13. The leave under Order 9 Rule 8 of the Original Side Rules is not automatic. The party who seeks special leave for production of additional documents at a belated stage, must satisfy the Court with regard to the existence of sufficient reason for his failure to produce the documents earlier.

14. In the case on hand, the trial is already over, the learned counsel for the respondents 1 to 3/plaintiff is also advanced his arguments. The learned counsel for the applicant/2nd defendant also advanced his argument in part. The present application has been filed only thereafter. In the absence of any reason in the affidavit filed in support of the present application for the failure of the applicant to produce the documents at the time of trial, the leave sought for cannot be granted for mere asking.



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15. It would be appropriate to refer to the observations of the Hon'ble Apex Court in ***Bagai Construction Thr. Its Proprietor Mr. Lalit Bagai vs. Gupta Building Material Store*** reported in ***MANU/SC/0195/2013 = (2013) 14 SCC 1,***

“10. In Velusamy (supra) even after considering the principles laid down in Vadiraj Naggappa Vernekar (supra) and taking note of Section 151 Code of Civil Procedure, this Court concluded that in the interests of justice and to prevent abuse of the process of the Court, the trial Court is free to consider whether it was necessary to reopen the evidence and if so, in what manner and to what extent. Further, it is observed that the evidence should be permitted in exercise of its power under Section 151 of the Code. The following principles laid down in that case are relevant:

19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that.



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non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.

With these principles, let us consider the merits of the case in hand.

11. The perusal of the materials placed by the plaintiff which are intended to be marked as bills have already been mentioned by the plaintiff in its statement of account but the original bills have not been placed on record by the plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial Court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the



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plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial Court, there is no acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on record by the plaintiff during the entire trial. Unfortunately, the High Court taking note of the words “at any stage” occurring in Order XVIII Rule 17 casually set aside the order of the trial Court, allowed those applications and permitted the plaintiff to place on record certain bills and also granted permission to recall PW-1 to prove those bills. Though power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of the court and Court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial Court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 of Code of Civil Procedure, the plaintiff cannot be permitted.”



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16. The law laid down by the Hon'ble Apex Court in the above said case law make it clear that the petition seeking leave of the Court to produce additional documents at a belated stage cannot be allowed for mere asking but the applicant must make out a case for granting leave. In other words, the applicant must satisfy the Court that he was prevented from producing the documents which were in his possession at the time of delivery of his pleadings or atleast at the time of trial. In the absence of any explanation for his failure to produce the documents which were in his custody, even at the time of delivery of pleadings, it is not open to the applicant to seek leave that too at the time of arguments. Therefore, the present application filed by the applicant/2nd defendant is liable to be dismissed and accordingly, A.No.5450 of 2022 is dismissed.

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