



WEB COPY



A.No.822
in C.S.No.378 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A.No.822 of 2023
in C.S.No.378 of 2019

C.Nagarajan

... Applicant

Vs.

U.Karthikeyan

... Respondent

Prayer: Application filed under Order XIV Rule 8 of Madras High Court Original Side Rules r/w Order VIII Rule 1A(3) of CPC, to grant leave to receive the below mentioned documents in evidence:

Sl.No.	Date	Description of Documents	Remarks
1.	18.06.2015 to 30.05.2016	Record slip of cheque book No.649901 to 650000 pertaining to KRA Associates A/c.No.033402000001812	Photo Copy
2.	23.05.2015 to 30.05.2016	Record slip of cheque book No.353851 to 353900 pertaining to KRA Associates A/c.No.033402000001812	Photo Copy
3.	22.01.2016 to 30.12.2017	Bank Statement of KRA Associates.	Photo Copy

For Applicant : Mr.D.Prahbhu Mukunth Arun Kumar

For Respondent : Mr.N.Baskaran
for Mr.S.Murugavel

ORDER



A.No.822
in C.S.No.378 of 2019

WEB COPY

The present application has been filed by the applicant/defendant seeking leave to receive the documents mentioned in the Judge's Summons.

2.Heard Mr.D.Prahbhu Mukunth Arun Kumar, learned counsel for the applicant and Mr.N.Baskaran, learned counsel appearing for the respondent.

3.Learned counsel for the applicant/defendant would submit that a money suit had been initiated by the respondent/plaintiff. He would submit that the Plaintiff being a Chartered Accountant of the applicant had misused the cheques deposited for payment of Income Tax. He would submit that the applicant had neither borrowed any sum as alleged in the plaint for which he had filed a detailed written statement. Unfortunately, at the time of filing the written statement, he had misplaced the documents that are stated in the Judge's Summons to be filed along with the written statement and therefore, he is filing the present application to receive the said documents to be marked as defendant's exhibit during his examination in support of his claim. He would submit that the document in Sl.Nos.1 and 2 is sought to be marked to establish that the cheques were not issued by him. With regard to the document in Sl.No.3, he would submit that it is a bank statement of the applicant for a period from 22.01.2016 to 30.12.2017 to establish that the applicant had also paid



A.No.822 -----
in C.S.No.378 of 2019

various amounts to the respondent/plaintiff. Hence, he would seek leave to receive the aforesaid documents.

4.Countering his arguments, learned counsel for the respondent/plaintiff would submit that the applicant in his affidavit had not stated for what reason the aforesaid documents are sought to be received. He would also further submit that even though the applicant had stated that the said documents were misplaced along with other files, there is no statement of fact as to when the applicant had recovered the said documents. He would submit that the written statement was filed by the applicant as early as in the year 2019 and the present application is sought to be made only in the month of February 2023.

5.He would submit that the applications are not supported by any material facts. He would further submit that document No.3 is a bank statement. Even if he had misplaced the bank statement, he could have applied for the same and he would request this Court to take judicial notice of the fact that as and when the bank statement requested, the concerned bank provides the same without any delay.

6.When that being so, he would submit that the present application is



A.No.822
in C.S.No.378 of 2019

only to drag on the proceedings and harass the respondent from enjoying the fruits of the decree with hopeful of law being granted. Hence, he would request this Court to dismiss the application as being devoid of merits. He would further submit that the examination of the plaintiff had been delayed and he had already been very much harassed in making him to wait the entire day for being cross examined and thereafter an adjournment would be sought for some other day. Finally after intervention of this Court by order dated 25.08.2022, the evidence of the respondent/plaintiff was closed on 11.10.2022. The defendant has been in spite of repeated adjournments not examined himself even in chief. Hence, he would pray to this Court to dismiss the application filed by the applicant.

7.I have considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

8.As rightly pointed by the learned counsel appearing for the respondent/plaintiff, the affidavit filed in support of the Judge's Summons is bereft of any material fact. The only averment made by the applicant is that these documents are necessary to substantiate his case and that, he had misplaced the document at the time of filing the written statement. He had not even stated that as to when he traced those documents.

9.Further, the document in Sl.No.3 is only a bank statement which could



A.No.822
in C.S.No.378 of 2019

have been procured by the applicant within a reasonable time. Here again he also not stated as to why he had not approached the bank to obtain a statement to be filed along with the written statement. But, however, considering the fact that the suit is for recovery of money and also considering the fact that the applicant in this written statement had made an averment stating that his statement of account would reveal that no such transaction had taken place, I am of the view that leave may be granted to the applicant to receive the document in Sl.No.3 to the Judge's Summons as it would be a relevant document to be marked on the side of the defendant to substantiate the averments made in his written statement.

10.In respect of the documents in Sl.Nos.1 and 2, I am of the view that the same has not been referred to in his written statement and the nature of the document is only a record slip of the cheque books. When the claim of the applicant/defendant can be proved by the entries made in the bank statement, which this Court is inclined to grant leave to receive. There is no necessity to allow the application in respect of documents in Sl.Nos.1 and 2 of the Judge's Summons.

11.For the aforesaid reasons, the application is partly allowed and the



A.No.822 -----
in C.S.No.378 of 2019

leave is granted to receive the document in Sl.No.3 of the Judge's Summon. In respect of the document in Sl.Nos.1 and 2 leave are rejected. However, there shall be no order as to costs.

10.03.2023

Index: Yes/no

Speaking order: Yes/no

Neutral citation: Yes/no



WEB COPY



A.No.822 -----
in C.S.No.378 of 2019

K.KUMARESH BABU, J.

pam

A.No.822 of 2023
in C.S.No.378 of 2019

10.03.2023