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O.S.A.No.58 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

CORAM

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND**

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

**O.S.A.No.58 of 2023
and
C.M.P.No.5498 of 2023**

B.S.Krishnan

... Appellant

Versus

1.M/s.Peevees Exim Company Pvt. Ltd.,
Peevees Building,
Nilambur 679 329,
Malappuram District,
Kerala.

2.B.S.Shanmugam

3.B.S.Chandrasekar

4.M/s.LSP Agro Limited,
Registered Office,
No.36, St.Mary's Road,
R.A.Puram, Chennai-28.

... Respondents

PRAYER : Appeal filed under Order XXXVI Rule 9 of Madras High Court



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Original Side Rules R/W. Clause 15 of Letters Patent Act, against the Order dated 06.01.2023 in C.S.No.290 of 2004.

For Appellant : Mr.S.Raveekumar

For Respondents : Mr.Venkatavaradan
for M/s.Sriram Venkatavaradan
[for R1]

JUDGMENT

The appellant / 1st defendant has preferred this appeal against the order dated 06.01.2023 passed in C.S.No.290 of 2004.

2. Heard both sides and the relevant records are perused.

3. It appears that PW1 has been examined in chief and Exs.P1 to P20 have been marked and the case was adjourned to 20.10.2022 and meanwhile, the memo in question was filed for the hearing on 14.11.2022. Based on the said memo, the following order was passed by the learned Single Judge of this Court on 06.01.2023: The below said order is sought to be assailed by the 1st defendant.

"That the documents produced before this Court be and are hereby directed to be received in evidence subject to proof, relevancy and admissibility.



2. *That the plaintiff herein be and is hereby required to explain why he could not produce the primary documents.*

3. *That the C.S.No.290 of 2004 be and is hereby referred back to the learned Master-I, for resumption of trial on 07.02.2023."*

4. The learned counsel for the appellant / 1st defendant would vehemently contend that the 1st respondent has not laid any foundation for non-production of primary evidence either in the plaint, proof affidavit or any of their pleadings and the trial in the suit had already commenced before the learned Additional Master-II, where the primary documents have been marked. It is further contended that instead of filing an application to let in secondary evidence, a memo was filed and his arguments were fortified by the judgment rendered by the Hon'ble Supreme Court in ***J.Yashoda v. K.Shobha Rani reported in (2007) 5 SCC 730*** and ***Jagmail Singh and Another v. Karamjit Singh and Others reported in (2020) 5 SCC 178***, wherein, it has been held that secondary evidence can be let in only with regard to existence, condition or contents of a document when the original cannot be produced under any of the provisions of Section 65 of the Indian Evidence Act, 1872, inter alia that the original of the documents for which secondary evidence is sought to be let in are in possession or power against whom the document is sought to be produced or



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any person out of the reach or not subject to the process of the court or that the person fails to produce the original after notice under Section 66 of the Act being issued or that the original has been destroyed or lost etc.

5. It was also brought to the notice of this Court by the learned counsel for the appellant/1st defendant that as per law laid down in ***Dhanpat v. Sheo Ram (deceased) through Lrs and others (2021 (1) Law Weekly 228)*** that there is no requirement to file an application under Section 65 before the secondary evidence is let in, if the party has already laid a foundation for letting in the secondary evidence either in the plaint or in evidence.

6. The learned counsel for the appellant has also circulated the Order passed by the Hon'ble Supreme Court of India in Suo Moto Writ (Crl) No.(s).1/2017 in RE: ***To issue certain guidelines regarding inadequacies and deficiencies in Criminal Trials vs. The State of Andhra Pradesh & Ors.***, wherein the Hon'ble Supreme Court has given certain directions to the Criminal Courts.

7. The learned counsel for the appellant had also taken pains to explain the observations made by the Hon'ble Supreme Court in *J.Yashoda v. K.Shobha Rani* reported in (2007) 5 SCC 730, wherein the Hon'ble Supreme Court has



held that for adducing secondary evidence it is necessary for the party to prove existence and execution of the original documents.

8. Per contra, the learned counsel for the 1st respondent / plaintiff would contend that when the documents are sought to be filed by the party to the proceedings, an order to the effect as mentioned supra will be passed. Only at the time of recording the evidence, the trial Judge after hearing the objections if any, would either choose to mark the document or take other recourses.

9. The sole plaintiff herein has filed Civil Suit for recovery of money as against the defendants No.1 to 4 for a sum of Rs.3,94,72,726/- in connection with RBD Palmolein sold and supplied to the 4th defendant herein. The memo reads that the following documents were not marked during the said hearing for the reason that the same were photocopies :

- a) Letter dated 05.10.2000 addressed by the Defendants to the Plaintiff.
- b) Foreign Supplier's Invoice No.183 dated 23.11.2000.
- c) Bill of Entry dated 09.12.2000.
- d) Letter dated 14.12.2000 addressed by the Defendants to the Plaintiff requesting not to deposit the cheques.
- e) Memorandum of deposit of title deeds dated 21.05.2001.



f) Reply letter dated 16.11.2002 from the Counsel for the Defendant to the Counsel for the Plaintiff.

g) Notice dated 09.12.2002 issued by the Counsel for the Plaintiff to the Defendants appointing Mr.S.Thangaperumal as arbitrator.

10. As mentioned supra, in this case, the trial is commenced by examining in chief and Exs.P1 to P20 have been marked and the case was adjourned to 20.10.2022. Meanwhile, a memo was filed by the plaintiff's side, praying the trial Court to receive the memo mentioned documents as mentioned supra and the learned Single Judge has passed an order "*That the documents produced before this Court be and are hereby directed to be received in evidence subject to proof, relevancy and admissibility.*"

11. In this regard, it is relevant to extract Order VII Rule 14 (3) CPC :

"14. Production of document on which plaintiff sues or relies.-

....

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit."

12. The above said provision is self explanatory. A document/documents which ought to have been filed in Court at the time of presentation of plaint, if not produced, only with the leave of the Court at the later point of time, the documents can be received in evidence on his behalf. Leverage is given to the plaintiff where if he chooses to produce the document or documents at a later



stage, then he shall do so only with the permission of the Court. The word " shall not without the leave of the Court" cannotes that it is mandatory on the part of the plaintiff to file an application along with the affidavit who seeks for the leave of the Court why the documents were not filed at the time of presenting the plaint. As per Order VII Rule 14(1), it is incumbent on the plaintiff to produce in Court the documents which he relies upon at the first instance. After framing of issues, the parties are given opportunity to file their respective list of witnesses and documents. If any documents or its copy if could not be filed with the plaint, such documents may be filed under Order VII Rule 14(3) C.P.C. It is pertinent to note that the word "shall" has to be construed as "must" which cannotes that must strongly imperative. Therefore, we are of the view that with regard to the documents which are sought to be marked at a later stage, still the plaintiff has got opportunity to move an application along with affidavit explaining the reasons there on, before the trial Court under Order VII Rule 14(3) C.P.C., and after receipt of objection, the Trial Court is empowered to take a decision after hearing both the parties.

13. With these observations, this appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.



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[S.V.N., J.] [R.K.M., J.]
15.03.2023

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Index : Yes/No
Speaking/Non-Speaking Order
ssn

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and
R.KALAIMATHI, J.,

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