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A.No.226
in C.S.(Comm.Div).No.94 of 2021

A.No.2264 of 2023
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S.SOUNTHAR, J.

The instant application has been filed by the defendants in the suit seeking leave of the Court to produce additional documents under Order XI Rule 1 Sub Rule 10 of Code of Civil Procedure (hereinafter called as 'CPC' for brevity).

2. The respondents/plaintiffs herein filed the above suit seeking declaration that applicants/defendants are 'Money Lenders' as defined under Section 2(8) of the Tamil Nadu Money Lenders Act, 1957 and only entitled to charge interest at the rate of 9% per annum on the money borrowed by respondents under Simple Mortgaged Deed dated 16.04.2012. The respondents also sought for redemption of mortgage and other reliefs. They also sought for a declaration that subsequent Mortgage Deed dated 13.03.2020 executed between the applicants and respondents was null and void. The trial in the suit had already commenced and evidence on the side of the respondents/plaintiffs was over.

3. At present, the suit is in the stage of DW.1 cross. In the affidavit filed in support of this application, it was stated by the applicants that they sought to mark certain certificates issued by their Auditor and the same was opposed by the respondents on the ground that those documents had not been filed along with their written statement. It was



asserted by the applicants that four Chartered Accountants' Certificates sought to be marked by the applicants were filed before this Court along with the Application Nos.1014 and 1015 of 2022 by way of separate typed-set of papers and hence, the documents cannot be termed as the one which are being introduced afresh.

4. It was also averred that copies of documents were already served on the learned counsel for respondents and those documents had been referred to by both the parties during arguments of Interlocutory Application.

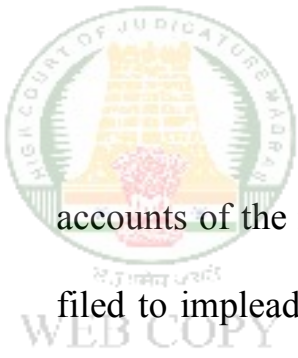
5. The learned counsel for the applicants mainly submitted that though the documents in question were not filed technically along with written statement of the applicants, the same was filed during enquiry in Application Nos.1014 and 1015 of 2022 almost at the same time when written statement was filed. The learned counsel submitted that inadvertently the documents were not included in the list of documents filed along with written statement and by marking these documents, the copies of which were already filed before this Court in interlocutory stage would not cause any prejudice to the respondents. Accordingly, he prayed for allowing of the application.

6. The learned Senior Counsel appearing for the respondents/plaintiffs mainly opposed this application on the ground that the applicants/defendants failed to incorporate the declaration on oath as mandated under Order XI Rule 9 of CPC as amended by



Commercial Courts Act, 2015 (hereinafter called as 'CC Act' for brevity) and hence, it is not open to the applicants to maintain this application that too after examination of plaintiffs' side witness. The learned Senior Counsel by taking this Court to the provisions of Order 6 Rule 15(A) Sub Rule 4 and 5 submitted that when written statement of the applicants herein is not verified by the affidavit or statement of oath in the form prescribed, the applicants shall not be permitted to rely on such pleading. The learned Senior Counsel further submitted that the Court is entitled to strike out the written statement of the applicants as it is not verified by an affidavit as prescribed.

7. A perusal of the records would disclose that copies of documents which are sought to be marked by the applicants now were produced in the typed-set of papers dated 24.03.2022 filed in A.Nos.1014 and 1015 of 2022. The written statement in the suit was filed by the applicants on 02.03.2023. The copies of documents in question were filed by way of typed-set of papers in the above said interlocutory applications on 24.03.2022. Therefore, it is clear that the documents were not filed along with written statement as contended by the applicants. However, the present application has been filed under Order IX Rule 1 Sub Rule 10 of CPC as amended by CC Act seeking leave of Court to produce and mark the same as documents through DW.1.



accounts of the respective parties and file a report. The Application No.1015 of 2022 was filed to implead 9th respondent as 9th defendant in the suit. After hearing the parties, this Court passed an order on 29.03.2022 allowing the Application No.1014 of 2022 by appointing a Chartered Accountant to inspect the accounts of the parties to the suit and also any other persons who were involved in the relevant money transactions.

9. This Court permitted both the parties to file audited report and other relevant documents for consideration of the Chartered Accountant appointed by this Court. As mentioned earlier, the documents now sought to be marked by the applicants were produced in the typed-set of papers dated 24.03.2022 in the Application Nos.1014 and 1015 of 2022. Therefore, the documents in question were already referred by the applicants and the same were submitted for consideration by the Chartered Accountant appointed by the Court. In these circumstances, by allowing application no prejudice would be caused to the respondents.

10. It is seen from the records that the applicants have not filed any affidavit verifying their pleading as prescribed under Order VI Rule 15(A) Sub Rule 1 of CPC. As rightly contended by the learned Senior Counsel for the respondents that written statement filed by the applicants does not contain a declaration on oath by the applicants as mandated by Order XI Rule 1 Sub Rule (9) of CPC. Notwithstanding, the failure of the applicants to incorporate a declaration in their written statement touching the documents



in their power, possession, control and custody and also their failure to file the affidavit or statement of truth in support of the written statement, the said written statement filed by the applicants was taken on file and based on the same, issues were framed and parties were relegated to the trial.

11. The trial in this suit is half-way through and based on the written statement filed by the applicants which were not supported by an affidavit or statement of truth as requires by amended CPC, the applicant was allowed to participate in the trial and cross examine plaintiff side witnesses based on the written statement which was not supported by affidavit. The respondents herein failed to raise any objection when the written statement was relied on by this Court for framing issues and when the applicants cross examined the plaintiffs' side witnesses based on the said written statement. Therefore, the respondents herein deemed to have waived their right to raise this point at this belated stage. It is very well settled law that procedural law is only a handmaid to advance the cause of substantial justice.

12. In the case on hand, though the written statement was not verified by the affidavit as required by the procedural law, the Court is not bound to strike out the pleadings for failure of the applicants to verify the same by statement of truth. In this regard, it would be appropriate to refer to the relevant provisions of Rule 15(A) of Order

<https://www.hc.madras.gov.in/judis> VI of CPC as amended by CCA and the same is extracted hereunder:-



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“15-A Verification of pleadings in a Commercial Dispute.-(1) Notwithstanding anything contained in Rule 15, every pleading in a commercial dispute shall be verified by an affidavit in the manner and form prescribed in the Appendix to this Schedule.

(2) An affidavit under sub-rule (1) above shall be signed by the party or by one of the parties to the proceedings, or by any other person on behalf of such party or parties who is proved to the satisfaction of the court to be acquainted with the facts of the case and who is duly authorised by such party or parties.

(3) Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-rule (1) unless the court orders otherwise.

(4) Where a pleading is not verified in the manner provided under sub-rule (1), the party shall not be permitted to rely on such pleading as evidence or any of the matters set out therein.

(5) The court may strike out a pleading which is not verified by a Statement of Truth, namely, the affidavit set out in the Appendix to this Schedule.”

13. A close reading of above provisions would make it clear that if the pleading of



the parties are not verified by a statement of truth as mandated by Sub Rule 1 of Rule 15(A) of Order VI of CPC, the Court has got discretion to strike out the pleading. The employment of the word 'May' in sub rule 5 of Rule 15(A) amplify the discretion available to the Court. Therefore, in the case on hand, where opposite party viz., the respondents failed to raise objection with regard to the failure of applicant to verify his pleadings by affidavit at various relevant stages viz.,

(a) at the time of filing of written statement;

(b) at the time of framing of issues;

(c) at the time of cross examination of plaintiffs' side witnesses by the applicants, based on this pleadings, is not entitled to turnaround and object at a belated stage that the pleadings of the applicants shall be struck off by invoking Order VI Rule 15(A) Sub Rule 5. Had the objection been made at the time of filing written statement, the applicants would have had an opportunity to cure the defects even at that stage. The Court must endeavor to adjudicate the substantial rights of the parties on merit and parties should not be thrown out on technical grounds.

14. In view of the fact that the trial in this case is half-way through, this Court is not impressed with the belated objection raised by the respondents with regard to the failure of the applicants to verify the pleadings by affidavit.

15. As mentioned earlier, the documents now sought to be produced and marked



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are all not new documents. The copies of the same were already produced before this Court in interlocutory stage and referred to by the parties. Hence, allowing this application would not cause any prejudice to the respondents. However, the applicants who produced copies of the documents, in an interlocutory application, which was taken up for consideration just two weeks subsequent to filing of written statement, ought to have filed the documents along with written statement. The failure of the applicants to file documents along with the written statement caused unnecessary delay in the progress of the trial by way of present application. Therefore, this Court feels it would be appropriate to direct the applicants to pay cost to the respondents for their failure to file documents along with written statement which resulted in unnecessary delay in the progress of the trial. Therefore, the present application is allowed on condition that the applicants shall pay a cost of Rs.10,000/- to the respondents within a period of two weeks from today. In case, the cost is not paid within time stipulated, the application shall stand automatically dismissed.

25.04.2023

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