



A.Nos.2491, 2492 and 2493 of 2023 in
C.S.No.996 of 2016

A.Nos.2491, 2492 and 2493 of 2023 in
C.S.No.996 of 2016

WEB C **R.N.MANJULA,J.**

These applications have been filed by the applicant / 1st defendant to reopen the evidence, recall D.W2 for further examination and to direct the respondents 5 and 6 who are D2 and D3 to produce the affidavit of undertaking dated 19.07.2022 and mark the same.

2. The suit in C.S.No.996 of 2016 has been filed by the plaintiffs claiming compensation for the death of one L.Giridhar due to the accident that had occurred due to the negligence on the part of the 1st defendant. After the evidence was over, the 1st defendant has filed these applications calling upon the defendants 2 and 3 to produce the affidavit of undertaking, dated 19.07.2022 and also sought permission to reopen the evidence of D.W.2 and recall him.

3. The learned counsel for the applicant / 1st defendant submitted that the affidavit of undertaking executed by the 2nd defendant on 19.07.2022 is a vital document wherein he has indemnified the 1st defendant from time to time and all time from any loss, claim, consequential damage, demands, proceedings, expenses, costs whatsoever that may arise against the 1st



A.Nos.2491, 2492 and 2493 of 2023 in
C.S.No.996 of 2016

defendant as a result of any order / Judgment that might be passed in

C.S.No.996 of 2016 or related proceedings if any and make good such loss, damages etc., that might be suffered by the 1st defendant. He has also stated that as per CAR policy (Contractors All Response), L & T General Insurance Company is liable to pay compensation.

4. The learned counsel for the applicant/1st defendant further submitted that unless this document is allowed to be produced by D.W.2 and D.W.2 has been examined on this aspect, the 1st respondent could not prove that he is not liable for paying compensation awarded by the Court in this case. Hence in the interest of justice, these applications should be allowed.

5. The 2nd defendant who was examined as D.W.2 has also filed his counter by stating that the original of the said affidavit does not lie with him and in fact it has been executed for the benefit of the 1st defendant and naturally the original affidavit will be lying in the custody of the 1st defendant. In paragraph No.5 of the counter affidavit, the 2nd defendant has stated as follows:



“5. I also further state that the Original Affidavit which was executed was handed over to the petitioner/1st defendant and these respondents are not in possession of the Original. I state that this Respondent also has only the copy. It is strange that the Petitioner/1st Defendant has come forward before this Court with a copy of the undertaking Affidavit and for reasons best known to them is not coming forward to file the original Affidavit. I state that at this stage in time there is no necessity for recalling of D.W.2 and there is no necessity to direct the answering Respondents to file the said Affidavit of Undertaking. I once again state that such Affidavit was executed at the instance of the Petitioner herein and in fact the same was under economic duress and the said Original Affidavit is under the possession of the Petitioner herein and not with the answering Respondents. Further the mere date of the Undertaking Affidavit would vindicate the stand of these Answering Respondents.”

6. The above submission of the 2nd defendant would make it clear that the 2nd defendant did not deny about the fact of executing the affidavit dated 19.07.2022. But his only submission is that when the original affidavit is available with the 1st defendant himself, the 1st defendant can be at liberty to produce the same through his own witnesses and need not bother about D.W.2.



A.Nos.2491, 2492 and 2493 of 2023 in
C.S.No.996 of 2016

7. The learned counsel for the 1st defendant submitted that original

affidavit is not available with the 1st defendant as well.

8. Even if the original affidavit is not available, the fact remains that the affidavit is admittedly executed by the 2nd defendant for the benefit of the 1st defendant. When the 2nd defendant has admitted the said fact in his counter affidavit itself, it is unnecessary to call upon the 2nd defendant to depose evidence on the above aspect. If both parties do not have original affidavit, then the permission of the Court can be sought to produce the copy of the original affidavit and to receive the same as secondary evidence. Since the execution of the affidavit is not denied, it is easier for the 1st defendant to call upon his own witness and mark a copy of the affidavit as an additional document and as a secondary evidence.

9. During the course of hearing, it is brought to the knowledge of this Court that L & T General Insurance Company Limited is merged with HDFC General Insurance Company Limited. The HDFC General Insurance Company Limited has already been impleaded as a party to the proceedings.



A.Nos.2491, 2492 and 2493 of 2023 in
C.S.No.996 of 2016

10. There is no representation for the 5th defendant also and he did not

raise any objection about the affidavit, dated 19.07.2022. In this circumstance, I feel it is unnecessary to recall D.W.2 though it might be necessary to reopen the case for the purpose of enabling the 1st defendant to produce the copy of the affidavit, dated 19.07.2022 as an additional document of his side by seeking permission of the Court and to mark it through D.W.1 himself.

11. With these observations, these petitions are closed. By virtue of this order, the trial is reopened and the 1st defendant is at liberty to file applications to receive additional document along with a petition to accept the same as secondary evidence within a period of one week.

12. Post the main suit on 13.06.2023.

06.06.2023

vum



WEB COPY



A.Nos.2491, 2492 and 2493 of 2023 in
C.S.No.996 of 2016

R.N.MANJULA,J.

vum

A.Nos.2491, 2492 and 2493 of 2023 in
C.S.No.996 of 2016

06.06.2023