A.Nos.2904, 2905 and 2906 of 2023
in C.S.No.926 of 2017

S.SOUNTHAR, J.

These applications are filed by the applicant/plaintiff seeking to reopen the plaintiff's evidence, recall PW.1 and to file additional documents.

2. The instant suit has been filed by the plaintiff seeking recovery of Rs.4,88,38,305/- from the defendants towards the payment of chit amount with interest.

3. The suit is in argument stage. The learned counsel for the plaintiff was heard by this Court on 12.04.2023 and 18.04.2023. Thereafter, the instant applications have been filed by the applicant seeking leave of the Court to reopen, recall and to produce additional evidence.

4. In the affidavit filed in support of these applications, it is stated by the applicant that at the time of argument while verifying exhibits, it came to the knowledge of the plaintiff that certain bank transactions relating to the suit claim are not reflected in the exhibits already marked. Therefore, the applicant has filed the present applications seeking leave of the Court to produce their bank statement of Axis Bank for the period from 01.08.2013 to 29.01.2014 and bank statement of

Indian Overseas Bank for the period 17.06.2013, 05.10.2013, 11.11.2013, 14.03.2014, 10.04.2014 and 13.05.2014. Along with these applications, the applicant also wanted to mark Income Tax Returns of the applicant pertains to the Assessment Years 2014-15, 2015-16, 2016-17, 2017-2018 and 2021-22.

5. The learned counsel for the applicant submitted that some of the bank transactions relating to suit claim are not reflected in the bank statement filed by the plaintiff before the Court and hence, the bank statements now sought to be marked shall be allowed to mark the documents as additional evidence. The learned counsel further submitted that the applicant already produced Income Tax Returns pertains to the years 2018-19 and 2019-20. Now, the applicant wants to produce the Income Tax Returns for the previous years 2014-2017 and subsequent year 2021-2022.

6. These applications have been opposed by the respondents 1 to 3 on the ground that at the stage of arguments and after advancing arguments in part, it is not open to the applicant to file an application to produce additional documents. In the counter affidavit filed by the respondents 1 to 3, it is also brought to the notice of this Court that earlier the applicant filed similar applications in A.Nos.5677 and 8900 to produce additional documents. Subsequently, the applicant also filed applications in A.Nos.2639, 2640 and 2641 of 2022 to reopen,

recall and to produce additional evidence. Therefore, this is the fourth application filed by the applicant to produce additional documents. In view of the provisions of Order 11 Rule 5 of Code of Civil Procedure as amended by Commercial Courts Act, 2015, it is not open to the applicant to maintain the present applications in a later stage of the suit.

7. It is seen from the records that earlier similar applications were filed by the applicant and this is the fourth occasion. Even these applications were filed after argument on behalf of the plaintiff was advanced in part. It is seen from the records that the bank statement already filed by the applicants was produced by them by filing similar application in A.No.8900 of 2019. The Income Tax Returns already filed by the applicant were produced by reopening and recalling of PW.1. The sequence events in this case make it clear that the applicant has come up with these applications to reopen, recall and to produce additional evidence for the fourth time.

8. Though the present suit was originally filed as ordinary suit before the original side of this Court. Subsequently, the jurisdiction of the commercial division was determined as early as 2018. Therefore, though procedural law is a handmaid of the substantial justice, the applicant cannot take advantage of the liberal view taken by the Court while considering the similar applications. It is not

stated in the affidavit filed in support of these applications as to what prevented the applicant from filing documents now sought to be produced as additional documents during trial or atleast when earlier applications for reopening the evidence, was filed. Hence, applicant failed to show reasonable cause for his failure to produce these documents before Court during earlier occasions.

9. In these circumstances, I am not inclined to accept the reasons given in the affidavit filed in support of these applications to reopen the case, recalling the evidence and produce additional documents.

10. Accordingly, all the applications are dismissed.

20.06.2023
(1/2)

dm

S.SOUNTHAR, J.

dm

A.Nos.2904, 2905 and 2906 of 2023
in C.S.No.926 of 2017

20.06.2023
(1/2)