



A.Nos.3117 to 3119 of 2023
in C.S.(Comm.Div.).No.94 of 2021

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S.SOUNTHAR, J.

These applications are filed by the applicants/plaintiffs in the suit, seeking to reopen the evidence of plaintiffs, recall P.W.1 and P.W.3 and to receive the additional documents filed along with the Judges summons.

2. It is seen from the records that the evidence of plaintiffs' side was already closed and the trial is in the stage of proof affidavit of D.W.1. At this stage, the respondents/defendants filed an application in A.No. 2264 of 2023, seeking leave of the Court to produce certain additional documents and the same was allowed by this Court on 25.04.2023.

3. In the affidavit filed in support of these applications, it is stated by the applicants that after allowing of the application filed by the respondents, permitting them to produce additional documents in A.No.2264 of 2023, the applicants were advised to produce certain additional documents namely E-mail and Whats App Communication between the parties and Certificate



under Section 65-B of the Indian Evidence Act, 1872. It is asserted by the applicants that these documents were not filed earlier by the applicants by inadvertence and these are very much essential to support their claim in the suit.

4. The learned Senior Counsel appearing for the applicants submits that in view of allowing of the application filed by the respondents, to produce additional documents in A.No.2264 of 2023, it has become necessary for the applicants to file additional documents that are sought to be produced.

5. The learned counsel for the respondents vehemently opposed these applications on the ground that the documents now sought to be produced by the applicants were very well available to the applicants even at the time of filing of the plaint and they failed to produce the same along with the plaint.



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6. Therefore, as per the Civil Procedure code as amended by the Commercial Courts Act, 2015 (as amended in 2018), the applicants are not entitled to maintain these applications at a belated stage, for production of documents mentioned in the Judges summons. The learned counsel for the applicants also relied on the Judgment of Hon'ble Apex Court in ***Sudhir Kumar Alias S.Baliyan Vs. Vinay Kumar G.B.*** reported in ***(2021) 13 Supreme Court Cases 71.***

7. As rightly submitted by the learned Senior Counsel appearing for the applicants that in the case on hand, after closing of evidence by the plaintiffs and at the stage of D.W.1's chief examination, the respondents herein filed a similar application for production of additional documents, which were not filed along with the written statement and the same was allowed. Therefore, the applicants, as a sequel to the similar application filed by the respondents, have come up with the present applications for production of documents mentioned in the Judges summons.



8. It is a settled law that the procedural law is only a handmaid of the substantial justice. In case of conflict between the procedural law and substantial rights of the parties, latter will prevail over the former. Therefore, this Court does not find any justification to reject these applications. However, taking into consideration there is some delay on the part of the applicants in filing these applications, this Court deems it appropriate to put the applicants on terms. Accordingly, all these applications are allowed on condition that the applicants shall pay a cost of Rs.10,000/- to the respondents within a period of two weeks from the date of receipt of a copy of this order. In case of failure to pay the cost imposed by this Court, within the time stipulated, the applications shall stand automatically dismissed without further reference to this Court.

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