



**A.No.4148 of 2023 in C.S No.174 of 2015**

**A.A.NAKKIRAN, J.**

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This application has been filed by the applicant/defendant to delete the documents which were marked as Ex.P1, P2, P4, P5, P9, P17, P18, P19, P20, P21, P25, P26, P27, P32, P33, P35, P36 and P37.

2. The learned counsel for the applicant/defendant submitted that originally the 1st plaintiff was examined as witness and through her, certain documents were marked. Therefore, the admissibility of those documents itself was questioned by the defendant. Finding difficulty in examining the 1st plaintiff, the plaintiffs withdrew her from continuing to examine her as witness and now the 2nd plaintiff is being examined as witness. Through him, the plaintiffs are trying to mark those documents pertaining to the 1st plaintiff which are no way connected to the 2nd plaintiff and also certain communications through electronic mails and the same was objected by the defendant for marking and admissibility of the documents. He further submitted that 2nd plaintiff cannot give any evidence in respect of the 1st plaintiff's claim regarding her employment in the defendant's company and she is the only competent person to speak about her claim and not any other person. So, any documents pertaining to the 1st plaintiff and the defendant company cannot be marked through the 2nd plaintiff. Hence, he prays to delete the documents as mentioned in the Judges Summons.

<https://www.mhc.tn.gov.in/judis> 3. The learned counsel for the respondents/plaintiffs submitted that this



application is an abuse of process of law and as per Section 120 of Indian Evidence Act, in all civil proceedings, the parties to the suit and the husband or wife of any party to the suit shall be competent witnesses. Insofar as the marking of e-mail communications are concerned, those mails are supported by a certificate in terms of Section 65-B of the Evidence Act. Therefore, the contention as if the admissibility and marking of those documents are erroneous, is without any substance. Those documents are subject to cross examination and it is always open for the defendant to confront the witness with the said document. Hence, this application is liable to be dismissed.

4. On perusal of records, it would reveal that due to sudden illness of the 1st plaintiff, she could not continue her examination and therefore, an application in A.No.2387 of 2023 was filed to eschew her evidence and permit the 2nd plaintiff to depose on behalf of both the plaintiffs and the same was allowed by this Court on 05.06.2023. As per 120 of Indian Evidence Act, the husband can give evidence on behalf of the wife. The defendant is at liberty to cross examine the witness with the said documents. Hence the objection made by the applicant/defendant is not acceptable at this stage and hence, this application is liable to be dismissed.



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5. Accordingly, this application is dismissed.



14.09.2023



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