



A.No.330 of 2023

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in

C.S.No.339 of 2018

C.SARAVANAN, J.

The applicant/plaintiff has filed the above suit for the following relief:-

(a) A sum of US\$ 7,22,601 (US Dollars Seven Lakhs Twenty Two Thousand Six Hundred and One only) together with interest at the rate of 18% per annum on US\$ 5,56,330 (US Dollars Five Lakhs Fifty Six Thousand Three Hundred and Thirty Nine only) from the date of filing of this suit till date of recovery.

(b) to pay the costs of this suit.

2. The defendants have been served with suit summons. However, they have not entered appearance and therefore, they have forfeited their rights to defend themselves in the above suit. Under these circumstances, the case is to be otherwise listed before the learned Master for recording *ex parte* evidence before the undefended Board and for passing Judgments and Decrees based on the averments in the plaint and the suit documents.



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3. It is, at this stage, the applicant/plaintiff has now come forward with the above application namely A.No.330 of 2023 to permit the applicant/plaintiff to file photocopies of the documents and mark all the photocopies of the documents as a Secondary Evidence.

4. The explanation given in the affidavit filed in support of the above application is that during flood in 2015, all the originals of the documents were washed out and therefore, the applicant/plaintiff is unable to produce the originals for being marked before the Court at the time of trial.

5. I have considered the arguments advanced by the learned Counsel for the applicant/plaintiff. I have perused the documents filed in support of this application.

6. The marking of the documents is covered by Chapter-V of the Indian Evidence Act, 1872 (hereinafter referred to as the Act).

7. As per Section 61 of the Act, the contents of documents may be



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proved either by primary or by secondary evidence.

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8. As per Section 62 of the Act, the primary evidence means the document itself produced for the inspection of the Court.

9. Section 63 of the Act deals with the circumstances under which copies made from the originals by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies can be allowed to be marked as secondary evidence.

10. Section 65 of the Act deals with the circumstances under which secondary evidence may be given of the existence, condition or contents of the documents.

11. As per Section 66 of the Act, the secondary evidence of the contents of the documents referred to in Section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has been previously given to the party in whose possession or power the document is, (or to his attorney or pleader) such notice to produce it as is prescribed by



law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case. The above requirements is not applicable for other situations contemplated in Section 65 of the Act.

12. The proviso to Section 66 of the Act reads as under:-

"Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:

(1) when the document to be proved is itself a notice;

(2) when, from the nature of the case, the adverse party must know that he will be required to produce it;

(3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(4) when the adverse party or his agent has the original in Court;

(5) when the adverse party or his agent has admitted the loss of the document.

(6) when the person in possession of the document is out of reach of, or not subject to, the



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process of the Court."

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13. Thus, there is no impediment for allowing the applicant/plaintiff to mark the photocopies of the documents as a secondary evidence. In any event, the respondents/defendants have forfeited their rights to defend themselves in the proceedings.

14. It is however open for the respondents/defendants to appear before the learned Additional Master-II and to mark their protest for marking of the documents as a secondary evidence during trial.

15. Under these circumstances, I am inclined to allow this application while reserving the rights of the respondents/defendants to oppose the marking of the documents if they desire to oppose them at the time of trial. Accordingly, this Application is allowed.



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16. This case is directed to be listed before the learned Additional Master-II for recording of evidence on 01.02.2023.

24.01.2023

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