



A. Nos.4329 and 4330 of 2023
in
C.S. No.327 of 2015

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ABDUL QUDDHOSE, J.

A. No.4329 of 2023 has been filed to receive additional documents being Sale Notice dated 29.09.2011 issued by the State Bank of India on the side of the defendant.

2. A. No.4330 of 2023 has been filed to permit the defendant to mark the photostat copy of the Encumbrance Certificate as Secondary Evidence in the suit.

3. The applicants are the defendants in the suit. The suit has been filed for recovery of money. The plaintiff is a Developer and the defendants are land owners. They have entered into a Joint Development Agreement, by which, the plaintiff had agreed to construct flats on behalf of the defendants. There arose disputes between the parties under the Joint Development Agreement. According to the plaintiff, certain sums of money are still due and payable by the defendants to the plaintiff under the Joint Development Agreement. The written statement has already been filed by the applicants / defendants in the suit. Issues have also been framed by this Court. The trial has commenced. The stage of



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the trial is now at the examination of the defendants side witness (DW1).

At this stage, A. No.4330 of 2023 has been filed on the ground that the Encumbrance Certificate has to be marked as Secondary Evidence, since the original of the Encumbrance Certificate which has been given to the plaintiff by the land owners at the time of entering into a Joint Development Agreement has been misplaced.

4. Similarly, insofar as A. No.4329 of 2023 which has been filed for reception of additional documents viz., the Sale Notice dated 29.09.2011 issued by the State Bank of India on the side of the defendant is concerned, the said document has also been misplaced. Earlier, State Bank of India had initiated SARFAESI proceedings against the subject property which is owned by the defendants under the SARFAESI Act and a Sale Notice dated 29.09.2011 has been issued to the defendants, who are the borrowers. According to the applicants, the respondent / plaintiff was very well aware about the existence of a loan, with State Bank of India at the time of entering into a Joint Development Agreement and therefore, the Sale Notice dated 29.09.2011 issued by State Bank of India as well as the Encumbrance Certificate which is sought to be marked as Secondary Evidence are very much necessary in



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support of the defence raised by the defendants that they are not liable to pay any sums of money to the plaintiff as claimed in the plaint. Both the documents relied upon by the applicants / defendants in these applications are public documents. Though the respondent may dispute entertaining these applications at this belated stage, being public documents which are necessary for the effective adjudication of this suit, this Court is rejecting the objections raised by the respondent / plaintiff for allowing these applications.

5. For the foregoing reasons, these applications are allowed as prayed for. However, it is made clear that these applications are allowed without prejudice to the rights and contentions of the respondent / plaintiff with regard to the relevancy of the documents in the main suit.

6. Post the matter before the learned Additional Master – I for recording evidence.

7. Both the learned counsels are directed to file a joint draft revised Case Management Schedule on the next hearing date.

8. Post the matter on 30.10.2023.

10.10.2023

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