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A.Nos.5958, 5959 & 5960
in C.S.No.291 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **09.03.2023**

DELIVERED ON: **20.03.2023**

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A.Nos.5958, 5959 & 5960 of 2022
in C.S.No.291 of 2020

Dr.P.N.Sathiyamoorthy

... Applicant in all Applns.

Vs.

Dr.Navin Noushad

... Respondent in all Applns.

Common Prayer: Original Applications filed under Order XIV Rule 8 of OS Rules read with Order 7 Rule 14 of CPC, to grant leave to the applicant/plaintiff to file additional documents as set out in the schedule hereto, to issue subpoena to the Manager, Indian Bank, Clock Tower Branch, Royapettah, for production of the original cheques issued by the applicant/plaintiff drawn in favour of the defendant and to adduce oral evidence as listed to the schedule to the judges summons and to issue subpoena to the Manager, Indian Bank Jawahar Nagar Branch, Kolathur, for production of the original cheques issued by the applicant/plaintiff drawn in favour of the defendant and to adduce oral evidence as listed to the schedule to the judges summons.

For Applicant in all Applns. : Mr.K.Bijai Sundar

For Respondent in all Applns. : Mr.C.Vidhusan



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COMMON ORDER

The instant applications have been filed seeking to grant leave to the applicant to file additional documents as set out in the list of documents annexed to the Judge's Summons, to issue subpoena to the Manager, Indian Bank, Clock Tower Branch, Royapettah for production of the original cheques issued by the applicant drawn in favour of the respondent and to adduce oral evidence as listed to the schedule to the judges summons and to issue subpoena to the Manager, Indian Bank Jawahar Nagar Branch, Kolathur for production of the original cheques issued by the applicant drawn in favour of the respondent and to adduce oral evidence as listed to the schedule to the judges summons.

2.The suit had been filed seeking for a recovery together with interest for a sum Rs.1,77,39,706/- being the suit claim on the principal sum of Rs.1,21,25,000/- out of a total sum of Rs.2,81,25,000/- loaned by the plaintiff to the defendant.

3.Heard Mr.K.Bijai Sundar, learned counsel for the applicant and the learned counsel for the respondent Mr.C.Vidhusan.



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4.Learned counsel for the applicant would submit that after the completion of pleadings and framing of issues, the suit was relegated to the learned Additional Master for recording of evidence. On completion of chief, the applicant was cross-examined by the learned counsel for the defendant. In the course of cross-examination, a question was put across to the applicant as to whether he would be willing to produce the financial statements in respect of the bank accounts, that the applicant is maintaining at the Indian Bank, Clock Tower Branch, Royapettah and Indian Bank Jawahar Nagar Branch, Kolathur for the period from 01.04.2017 to 31.03.2018. A further question to certain information relating to a First Information Report and calendar cases, the learned counsel for the defendant had marked some documents as Exs.D1 to D6 through the applicant who was examined himself as PW1.

5.A suggestion during the cross-examination would presuppose that the dispute between the applicant and certain third parties arising out of financial transactions between them is sought to be put against the applicant/plaintiff. Hence to explain that the said transaction has nothing to do with the present suit claim, the applicant seeks to mark documents listed in Sl.Nos.1 to 15 of the list of documents annexed with the Judge's Summons. That part to the question as to whether the applicant would be willing to produce the bank



documents. He would submit that the documents sought to be marked in Sl.Nos.16 to 18 has no relevance to the issues involved in the present case, as they are Vakalath and copy applications filed by the counsels for the respective parties in a different proceedings. He would further submit that the documents listed in Sl.Nos.1 to 15 relate to a criminal case between the applicant and some third parties and no reasons have been assigned whatsoever for grant of leave to such documents and they are no way relevant to the dispute involved in the present suit.

8.He would further submit that the said documents are also not relevant documents to meet out the documents marked as Exs.D1 to D6. The relevance of the Exs.D1 to D6 could be elucidated by cross-examining the defendant when they examine themselves as witnesses. Hence, he would submit that the application seeking for grant of leave in respect of documents in Sl.Nos.1 to 18 be rejected. As regards to the contentions for issuance of subpoena to the respective Bank Managers, he would submit as the respondent did not have any objection on the respective bank statement of the applicant being marked. There is no necessity to issue subpoena to the respective Bank Managers to speak about the various cheques as the bank statement would reflect such transactions. Therefore, he would plead to allow the applications seeking for



grant of leave to receive additional documents only in respect of the document in Sl.Nos.19 and 20 and to reject the applications for issuance of subpoena.

9.I have considered the rival submissions made by the learned counsel appearing on either side and perused the materials available before this Court.

10.A submission has been made by the learned counsel appearing for the respondent that there is no objection to grant leave for documents in Sl.Nos.19 and 20, which is supported by the averments made in the counter affidavit filed by the respondent. Hence, I do not propose to traverse in to the requirement as to whether the leave has to be granted in respect of those documents. However, in respect of documents listed in Sl.Nos.1 to 18, I would propose to segregate them into two sets viz., the documents in Sl.Nos.1 to 15 and the documents in Sl.Nos.16 to 18. The documents in Sl.Nos.1 to 15 are sought to be marked to explain that the documents that were marked as Exs.D1 to D6 during the cross-examination of PW1/applicant are not relevant to the issues involved in the present suit.

11.Even though, learned counsel for the respondent would vehemently contend that the documents in Sl.Nos.1 to 15 are not relevant to the issues in



the present suit, he had not made any statement as to how the Exs.D1 to D6 are relevant to the suit. What the applicant seeks to do by marking these documents in Sl.Nos.1 to 15 is to undo the suggestions put by the learned counsel for the respondent during his cross-examination of the applicant.

12.Learned counsel for the applicant has also fairly submitted that those documents may not have any direct relevance to the issues but those documents are very much relevant to assail the stand taken by the respondent during the course of cross examination of the applicant. Therefore, I find the documents in Sl.Nos.1 to 15 of the list annexed to the Judge's Summons may be necessary documents to substantiate the case of the applicant.

13.As regards to the documents in Sl.Nos.16 to 18, even though no averments have been made in the application as to the relevancy of the said document, when a query was put to the learned counsel for the applicant as to what was the necessity to seek leave to the receive those documents, he would submit that the learned counsel who is appearing for the respondent in these applications is also the counsel on record for the third parties against whom the applicant had initiated criminal proceedings and for that reason, he wanted to mark those documents.



14.In my view, the said documents are not necessary to be marked to the issues involved in these applications. The reasons assigned by the learned counsel for the applicant would not support the case of the applicant. The applicant will always be entitled to raise these issues during the course of arguments to substantiate his claim.

15.As regards to the applications seeking to issue subpoena to the respective Bank Managers, I am satisfied with the reasons assigned by the applicant in his applications, even though it has been stoutly opposed by the learned counsel for the respondent, I do not find any merits in the said submission. It is true that the statement of accounts would reveal the payment of cheques, marking of the cheques will prove that the same has been issued by the plaintiff in favour of the defendant and vice versa so as to sustain the statement of accounts that the applicant had extracted in paragraph No.11 of his plaint.

16.In fine, the Application No.5958 of 2022 is partly allowed and leave is granted to the applicant to file the additional documents as set out in Sl.Nos.1 to 15 and Sl.Nos.19 and 20 only. The leave in respect of the document in Sl.Nos.16 to 18 are rejected. The applications seeking for



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issuance of subpoena to the Bank Manager, Indian Bank, Clock Tower Branch, Royapettah and the Bank Manager, Indian Bank Jawahar Nagar Branch, Kolathur for production of the original cheques issued by the applicant drawn in favour of the respondent and to adduce oral evidence as listed to the schedule to the judges summons are allowed. However, there shall be no order as to costs.

17.The suit is relegated to the learned Master for recording of further evidence.

20.03.2023

Index: Yes/no
Speaking order: Yes/no
Neutral citation: Yes/no



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K.KUMARESH BABU, J.

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Pre-delivery order in
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