A.No.176 of 2023
in C.S.No.286 of 2021

K.KUMARESH BABU, J.

The plaintiff to the suit has moved the present application seeking to receive additional documents mentioned in S.No.1, 2 and 3 in the list of documents annexed to this application as exhibits.

2.Heard Ms.Anbarasi Rajendran for AAV Partners, for the Applicant, Mr.M.Thamizhavel, learned counsel appearing for the respondents 1 to 3, Mr.R.Sathish Kumar, learned counsel appearing for the 4th respondent.

3.Ms.Anbarasi Rajendran, learned counsel for the applicant would submit that when the suit was listed for recording of evidence it had come to the knowledge of the applicant that due to inadvertance, certain additional documents which eminated subsequent to the filing of the suit, had not been placed on record. She would further submit that the applicant had received a mail on 17.08.2021 from M/s.Deloitte, an external auditor of Cipla to confirm whether certain invoices which has been raised on the applicant on various dates between February 2020 and November 2020 by the 4th respondent were genuine. She would further submit that the relationship between the Cipla and the 4th respondent was that Cipla authorised under 4th respondent to supply medicines/ drugs at special rates quoted by them to the applicant. On furnishing of invoices raised on the applicant by the 4th respondent, the 4th respondent will be entitled to receive commission from Cipla as a part of share for selling/ supplying the medicines produced by Cipla. As the said invoices were not raised on the applicant, it came to light that the 4th respondent has played a huge fraud on the applicant by fradulently submitting invoices as if medicines have been supplied to the applicant. The seals that has been fixed are all on the invoices for which clarification sought for from the external auditor of Cipla are all forged seals and are not the seals of the applicant. Hence, the applicant had replied to M/s.Deloitte that the invoices were not acknowledged by the applicant and thereafter, M/s.Deloitte by an e-mail dated 10.12.2021 had informed the applicant about the rejection of monitory claim sought for by the 4th respondent. Hence, she would submit that the relevant e-mail communication between the applicant and M/s.Deloitte would have to be marked as documents as it would support the case of the applicant of the fraud that has been committed by the 4th respondent in connivance with the defendants 1 to 3. Hence, she would pray that the application prayed to be ordered.

4.Countering her arguments, learned counsel appearing for the respondent 1 to 3 would submit that the entire allegations that the respondents 1 to 3 in collusion with the 4th respondent had defrauded the applicant is wholly imaginary and is without any basis. He would further submit that the documents sought to be marked as exhibits does not relate to respondents 1 to 3 and therefore, there is no necessity to mark those documents.

5.Mr.R.Sathish Kumar, learned counsel appearing for the 4th respondent would submit that the documents sought to be marked by the applicant through the present application are not relevant documents to the subject matter in issue. He would submit that the claim of the 4th respondent from its supplier/ manufacturer is on the contractual obligation between them and the applicant cannot seek to benefit through such contractual obligation. Therefore, he would submit that the application to be dismissed in limine.

6.I have heard the rival submission made by the learned counsel appearing on either side and perused the materials available on record before this Court.

7.The suit had been initiated on the allegation that a fraud has been played upon by the respondents against the applicant by raising invoices based on the fake purchase orders issued by the 1st defendant on a behalf of the applicant and monies have been paid by the applicant based upon the invoices. It is the case of the plaintiff that the 4th respondent had not supplied any medicines against such invoices. But, however, he had been in receipt of amounts from the applicant and that the 4th respondent had disbursed such monies to the respondents 1 to 3. The documents in S.Nos. 1 and 2 had been received by the applicant even prior to the filing of the suit. The document in S.No. 1 is an e-mail dated 17.08.2021, document in S.No.2 is dated 19.08.2021. The suit had been presented before this Court on 13.09.2021. Hence, atleast the documents in S.No.1 and 2 are pre-suit documents.

8.The documents that has been sought to be relied upon by the applicant to be marked as exhibits are not documents which would establish the claim of the applicant in the plaint. The applicant in his reply to M/s.Deloitte has specifically said that these invoices have not been raised on the applicant and they are fradulent invoices. The suit has been instituted on the basis of the payment made on the invoices raised by the 4th respondent on the applicant for which no drugs have been supplied. Hence, the suit is based on the certain acknowledged invoices. What the plaintiff now seeks to mark as exhibits relates to invoices which the plaintiff has not acknowledged and claims the acknowledgment on the invoices attached to the e-mails were not acknowledged by him.

9.Therefore, in my view, the documents in S.No.1 to 3 which the applicant seeks to mark as exhibits in the present suit would not be in any way helpful to decide the issue involved in the suit. Hence, the application is without any merits and in fine is dismissed.

07.03.2023

gba

K.KUMARESH BABU, J.

gba

A.No.176 of 2023
in C.S.No.286 of 2021

08.03.2023