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O.S.A. No.59 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 05.03.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN**

**AND**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**O.S.A. No.59 of 2023**

**and**

**C.M.P. No.5517 of 2023**

M/s.Bollineni Developers Ltd.,  
Registered office at 6-2-913/914,  
5<sup>th</sup> floor, Progressive Towers,  
Khairatabad, Hyderabad – 500 004 and  
Branch office at  
New No.87, Old No.36,  
Poes Gardens,  
Chennai – 600 086.

Presently at Bollineni Hillside Project Office,  
Nookampalayam Village,  
Sithalapakkam Post,  
Chennai 600 131,  
Represented by its Authorised Signatory,  
T.Jayakrishna.

... Appellant

**Vs.**

1. Sailendra Kumar

2. K.Kamala

1/10



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3.Naresh Mehta

4.R.Chandrasekaran

... Respondents

**PRAYER:** The Original Side Appeal filed under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of Letters Patent to set aside the Order and Decreeal Order dated 09.12.2022 passed by the learned Judge in A.No.5450 of 2022 in C.S.No.256 of 2013.

For Appellant : Mr.R.Thiagarajan

For Respondents : Mr.K.V.Babu

**JUDGMENT**

*(Judgment of the court was made by Mohammed Shaffiq, J.)*

Heard both sides and perused the records.

2. The present appeal is filed by the appellant / second defendant in the suit in C.S.No.256 of 2013, challenging the order rejecting the application filed by them, seeking leave to file additional documents, on the premise that the learned Judge had erred in not exercising discretion vested on him to receive additional documents under Order IX Rule 8 of the Original Side Rules read with Order VIII Rule 1A(3) of the Civil Procedure Code (in short, “the CPC”), though the said documents are stated to be essential for resolving the issues involved in the suit and



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for rendering complete justice to both the parties.

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3. A reading of the order impugned in this appeal, would reveal that the learned Judge had rejected the above application viz., A.No.5450 of 2022 in C.S. No. 256 of 2013 primarily for two reasons viz.,

a) The application seeking leave to produce additional documents at a belated stage cannot be allowed for mere asking, but the applicant must make out a case for granting leave. In other words, the applicant must satisfy the Court that he was prevented from producing the documents, which were in his possession at the time of delivery of his pleadings or atleast at the time of trial. In the absence of any explanation for his failure to produce the documents, which were in their custody, it is not open to the applicant to seek leave, that too, at the time of arguments.

b) Secondly, the trial was over; and the learned counsel for the plaintiffs and the learned counsel for the second defendant have also advanced arguments; and it is at that stage that the said application has been filed. Thus, the application is at a belated stage of the suit, more so, no reasons explaining the delay, have been set out in the affidavit filed in support of the application.

4. For better appreciation, the relevant portion of the affidavit filed in



support of the application to permit the second defendant to file additional documents is extracted below:

*“7.Subsequently an interim Award and later final award came to be passed on the strength of the Memorandum of Compromise dated 18.11.2011 duly signed by the parties and their advocates. The said Award was challenged in O.P.No.307/2013 before this Hon'ble Court and ultimately the Petition filed under Sec.34 of the Arbitration and Conciliation Act was dismissed and the Award had become final and conclusive between the parties hereto. Since an Arbitral dispute arose between the 1<sup>st</sup> Defendant and 2<sup>nd</sup> Defendant arising out of original Memorandum of Understanding dated 27.11.2006 and 31.03.2007, which shall have direct and substantiate bearing on the subject matter of the present proceedings, we are advised to file the present application in filing the additional affidavit of documents on behalf of the 2<sup>nd</sup> Defendant / Applicant herein and receive the same or either by consent of parties or by condoning in filing additional affidavit of documents through me, so that the Hon'ble Court shall be in a position to appreciate and come to a just and proper conclusion in the light of the orders passed by this Hon'ble Court and also in the light of the Award passed by the Sole Arbitrator and decide the matter in controversy. For the purpose of appreciating the rival claims and defense projected by the respective parties, in the present suit it is just and necessary that the documents mentioned in the affidavit of documents and Judges summons may be received. Unless such documents are received in evidence in the present suit and are dealt with in accordance with law, we shall not be in a position to palce our defense to the suit claim as against the defendants and the suit property.”*

4.1. We have extracted the above portion of the affidavit, since the primary reason which weighed by the learned judge, while rejecting the application, was that the appellant herein had not explained the reasons for the delay. On a perusal of the affidavit filed in support of the application, we find no reason explaining the delay in producing the documents at this stage. The entire attempt made by the



appellant was only to indicate the relevance of the said document in resolving the disputes between the parties.

5. The learned counsel for the appellant placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Levaku Pedda Reddamma & others vs. Goittumukkala Venkata Subbamma and another [2022 LiveLaw (SC) 533]*** to submit that the rules of procedure are hand-maid of justice and even if there is delay, the trial court would impose costs rather than decline production of documents. Reliance was also placed on the judgment of the Hon'ble Supreme Court in the case of ***Sugandhi (Dead) by Lrs. and another vs. P.Rajkumar rep. by his Power Agent Imam Olli [AIR 2020 SC 5486]*** to buttress the argument that the procedures are hand-maid of justice and technicalities should not be allowed to come in the way of the Court to do substantial justice.

6. On the other hand, the learned counsel for the respondents / plaintiffs submitted that the appellant has not adduced any reason for the delay in producing the additional documents at the belated stage and hence, the learned Judge has rightly dismissed the application, by the order impugned herein, which does not require any interference at the hands of this court.

7. It is trite law that it is a matter of discretion vested with the Court to accept or reject an application to receive additional documents. It is for the



applicant to demonstrate that the non-production of documents earlier, was only in view of valid and sufficient reasons and secondly, the application must be bonafide and thirdly, the evidence that is sought to be introduced, must have a bearing on the issues and must be such so as to assist the Court in rendering justice. The power to accept additional documents cannot be used in a routine fashion nor can one claim it as a matter of right to do so, would defeat the very purpose of the amendments brought in to the CPC to expedite the judicial proceedings / trial. In this regard, it may be useful to refer to the judgment of the Hon'ble Supreme Court in the case of ***Bagai Construction Thr. its proprietor Mr.Lalit Bagai vs. Gupta Building Material Store [(2013) 14 SCC 1]*** which was also relied upon by the learned Judge, while passing the order impugned herein. The relevant portion of the said judgment of the Hon'ble Supreme Court is extracted below for ready reference:

*“12. Further, it observed that the evidence should be permitted in exercise of its power under Section 151 of the Code. The following principles laid down in that case are relevant : (K.K. Velusamy case para 19)*

*“19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is*



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*avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs."*

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7.1. A reading of the above extract would show that the onus is on the party seeking leave of the court to let in additional documents to demonstrate that the delay was only in view of adequate and sufficient cause; and the failure to furnish reasons explaining the delay in producing the documents would prove fatal to his/her request for filing of additional documents.

8. It may also be relevant to note that the Hon'ble Supreme Court in the case of ***Sugandhi v. P. Rajkumar (supra)*** relied upon by the learned counsel for the appellant herein, found that the applicants had assigned cogent reasons explaining the delay and hence, leave was granted. The following extract is relevant :

*"10. Coming to the present case the defendants have filed an application assigning cogent reasons for not producing the documents along with the written statement. They have stated that these documents were missing and were only traced at a later stage. It cannot be disputed that these documents are necessary for arriving at a just decision in the suit. We are of the view that the courts below ought to have granted leave to produce these documents."*

While, the appellant herein has not adduced reasons for delay in producing the documents at this stage. Therefore, the above decision is inapplicable to the present case.



9. Yet another reason why we find that the order of the learned Judge does not warrant interference, is that the documents, which are now sought to be produced, were available with the appellant, even while filing the written statement and they were also conscious of the relevance of these documents inasmuch as both sides have alluded to these documents at great length in their pleadings. The attempt made by the appellant to now introduce the said documents is only to protract the proceedings and hence, lacks *bona fides*.

10. That apart, the failure to furnish reasons explaining the delay in producing the documents by itself would prove fatal. The submission of the learned counsel for the appellant to suggest that the appellant may be imposed with costs and that, procedures are hand-maid of justice, overlooks the fact that imposition of costs is not a panacea for accepting the documents even at a belated stage of the suit under all circumstances. The least that is expected from the appellant, who intends to seek / crave leave of the court to file additional documents, is to explain the reason for the delay. Thus, having failed to even explain the reasons for the delay, which is well within the knowledge of the appellant, the application for receiving additional documents was rightly rejected by the learned Judge.



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11. In the light of the above discussions, we find no reason to interfere with the order of the learned Judge, which is impugned herein. Accordingly, the Original Side Appeal stands dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

[R.M.D., J.] [M.S.Q., J.]

05.03.2024

Speaking (or) Non Speaking Order  
Index: Yes/No  
Neutral Citation: Yes/No  
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**R.MAHADEVAN, J.**  
**AND**  
**MOHAMMED SHAFFIQ, J.**

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