



**Orders Reserved on  
22.07.2024**

**Orders Pronounced on  
16.12.2024**

**C.M.P.No5279 of 2024**  
**in**  
**A.S.No.97 of 2024**

**RMT.TEEKAA RAMAN, J.**

Unsuccessful plaintiff is the appellant herein.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. The plaintiff filed the suit in O.S.No.8737 of 2019 on the file of the XVIII Additional Judge, City Civil Court, Chennai.

4. This civil miscellaneous petition is filed under Order XLI Rule 27 of the Civil Procedure Code.

5. The factual matrix of the case reads as under:

The petitioner/appellant filed the suit seeking for the recovery of an amount of Rs.7,50,000/- towards principal and Rs.2,85,000/- towards interest



in total a sum of Rs.10,35,000/- against the respondents herein. As per the pleadings the respondents have not paid the amount and hence legal notice sent and subsequently he filed a suit.

6. The plaintiff side evidence was closed and hence he filed an application in I.A.No.6 of 2023 to reopen the plaintiff evidence and for marking of documents and to recall PW1. He sought to mark the copies of documents viz., (i) the original passbook issued by the Bank of Baroda reflecting the loan amount borrowed by the respondent; (ii) the Bank Statement issued by the Indian Overseas Bank reflect payment of interest by the defendants from August 2017 till March 2018 and (iii) IT returns acknowledgement of the appellant/plaintiff for the annual year 2018-2019, 2019-2020 and 2021-2022.

7(a). It appears from the adjudication paper that the matter was *suo motu* reopened for clarification by the trial Court on 07.07.2023 after reserving the orders in IA on 04.07.2023 and again adjourned to 10.07.2023. It was dismissed for default on 10.07.2023. So, he filed a copy application. However, without complying with the copy application in the said IA.No.6 of



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2023, the matter was posted for evidence and the respondents side evidence is closed without adducing any oral and documentary evidence and immediately, judgment was delivered dismissing the suit. Admittedly, the defendants have not let in any oral or documentary evidence.

7(b).The stand of the defendants in the written statement is that the receipt of the amount is admitted. However they denied the statement that it is a loan, but donation for construction of a Church and also denied the payment of alleged interest. For the said purpose alone three additional documents have to be marked. In I.A.No.6 of 2023, orders was reserved and then reopened and then adjourned. Thereafter, IA was dismissed for default. Copy application filed by the plaintiff, but without complying with the copy application, the trial Court has proceeded to dispose of the suit itself since the respondent made an endorsement, no oral or documentary evidence on their side. Therefore, all the three documents could not have been filed. Since the suit was dismissed, regular appeal has been filed. The proposed documents have been perused by me. Since they are unmarked documents, I am not expressing any opinion.

8. The learned counsel for the petitioner/appellant could contend that it



is a fit case for remand since vital documents are not marked and no opportunity was given for filing a revision against the dismissal of the IA.

9. Per contra, the learned counsel for the respondents could state that these kind of applications to be taken along with the first appeal for disposal.

10. This Court is conscious of the fact that the circumstances under which Order 41 Rule 27 has to be acknowledged and allowed.

11. Admittedly, in this case, the plaintiff filed the suit for recovery of money paid by him through online transfer. The defendants in the written statement had taken the plea that amount is given but for the purpose of construction of Church as a donation. The application is since of the year 2023 and the receipt of the documents namely, Bank statement of the plaintiff and the income tax returns acknowledgement filed in time before the Income Tax Authority, orders was reserved on 04.07.2023 and *suo motu* reopened on 07.07.2023 and adjourned to 10.07.2023 and dismissed for default on 10.07.2023.



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12. This Court is not expressed any opinion since it is not sitting as appellate forum on order of the IA. So far, admittedly, even as per the orders passed in IA.No.6 of 2023, it is hotly contested by both the parties and hence, this Court is of the considered view that dismissed for default of the said IA is not a fair trial. Be that as it may, when a copy application is filed for the order made in plaint of the year 2023, without complying with the copy application, the suit itself was posted for trial. It appears that the respondents made endorsement that no oral and documentary evidence on their side. Immediately, the learned Judge appears to have reserved the orders in the suit and dismissed the suit.

13. This Court is not expressing any opinion except to say that the fair trial is lacking in this case. Accordingly, this CMP is allowed. The three documents now sought to be filed is taken on file since new documents are taken on file and the respondents, in view of the order of dismissal of IA.No.6 of 2023, have not adduced any oral or documentary evidence and therefore necessary parties are at liberty to file necessary application for further cross-examination of the PW1 if they so be advised and it is open to the defendants to let in evidence at the appeal suit in accordance with the procedure



contemplated in the High Court Appellate Side Rules. In view of the special circumstances of the case since an error has been committed by the learned Judge in dealing with the application and proceedings thereon, I am constrained to pass an order in the CMP.

14. Accordingly,

- i. The civil miscellaneous petition in C.M.P.No.5279 of 2024 in A.S.No.97 of 2024 is allowed.
- ii. Both the parties are at liberty to file necessary applications for giving evidence, if they so be advised.
- iii. The three additional documents are marked as Ex.A5, Ex.A6 and Ex.A7 in the appeal suit.

**16.12.2024**

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**RMT.TEEKAA RAMAN, J.**

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**Order made in**  
**C.M.P.No.5279 of 2024**  
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**16.12.2024**