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C.R.P.No.2384 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.2384 of 2024

and

CMP.No.12516 of 2024

Mr. Harish Ori

... Petitioner

Vs.

1. P.Balasubramaniam

Sky Dot Films,
Flat No.7, 3rd Floor,
10, Jawaharlal Nehru Street,
T.Nagar, Chennai - 600 017.

2. S. Thanigaivel,

Proprietor M/s. RSSS Pictures,
3/457 1st street, Kazura Garden,
Chinna Neelangarai, Chennai - 600 041.

Also having address at
D/No.50/103, Poes Road,
Flat No.A-1, 4th Floor, Agni Flats,
Mr.Raj TV., Teynampet,
Chennai 600 018.

... Respondents



C.R.P.No.2384 of 2024

PRAYER: Civil Revision Petition has been filed under Article 227 of Constitution of India, 1950, praying to set aside the order dated 21.02.2024 in I.A.No.3 of 2023 in C.O.S.No.762 of 2022 passed by the District Judge, Commercial Court, Egmore, Chennai and allowing the petitioner to produce the photocopies of the Partnership deed dated 21.01.2011 and modified partnership deed dated 07.04.2011 for marking them as Exhibits P1 and P2 in C.O.S.No.762 of 2022.

For Petitioner : Mr. J. Srinivasan

ORDER

This Civil Revision Petition has been filed seeking a direction to set aside the order dated 21.02.2024 in I.A.No.3 of 2023 in C.O.S.No.762 of 2022 passed by the District Judge, Commercial Court, Egmore, Chennai and to allow the petitioner to produce the photocopies of the Partnership deed dated 21.01.2011 and modified partnership deed dated 07.04.2011 for marking them as Exhibits P1 and P2 in C.O.S.No.762 of 2022.



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2. This Court, on 03.07.2024, had passed the following order:

“The petitioner/plaintiff filed a suit before this Court in C.S.No.638 of 2014 along with interim applications in O.A.No.776 of 2014 and A.No.6126 of 2014. Interim order was granted and the first respondent herein was directed to deposit 50% of the claim amount. In the meanwhile, contempt petition and other miscellaneous petitions filed. After formation of Commercial Court, C.S.No.638 of 2014 was transferred to the Commercial Court and taken on file as C.O.S.No.762 of 2022. The first respondent remained exparte and the second respondent stepped in after dissolution of petitioner's partnership with the first respondent. In the suit, the first respondent conveniently kept away and it is the second respondent contesting the case and also protecting the interest of the first respondent.

2. The contention of the learned counsel for the petitioner is that the entire case rests on the Joint Venture Partnership Agreement dated 21.01.2011, Modified Partnership Agreement dated 07.04.2011 and Deed of Dissolution of partnership dated 02.08.2013. Even prior to filing of the suit, in the notice as well as in the plaint it is clearly stated that the originals of the Deeds are with the first respondent/first defendant and only photostat copies are with the petitioner/plaintiff. Citing the same, photostat copies were filed in the suit. Now at the stage of trial, marking of these documents is required. Further, after transfer of the case to the Commercial Court, as per the Appendix-I [Statement of Truth] admission and denial of documents filed by the petitioner since first respondent was set exparte and second respondent though contesting the case not filed any Statement of Truth or objections in this regard. Hence, it has to be taken that these documents not objected to. In view of the same, the listed documents 1 and 2 [true copy] which has been annexed to the plaint can be marked as



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primary documents. Further, except in sending notice and calling upon to produce these two documents by the first respondent, all other conditions complied with. The first respondent wantonly keeping himself away and trailing the suit through the second respondent. He further submit that the second respondent admits that he is now stepped in and took up the role of the petitioner and continuing with the business but claiming he has nothing to do with the transactions between the petitioner and the first respondent is not acceptable.

3. Further, the Trial Court dismissing the petition of the petitioner stating that the partnership firms are governed by the Indian Partnership Act, 1932 and the registration is mandatory as per Section 69 of the Indian Partnership Act, the petitioner can apply and get all the documents from the appropriate authorities and produce them as exhibits before this Court is on a wrong premise. The case of the petitioner is that it not a registered partnership firm and hence, the question of registration does not arise. In such circumstances, citing Section 63 of the Indian Evidence Act and dismissing the petition would not arise. In this case, Section 65 and Section 66 of the Indian Evidence Act may be applicable.

4. The learned counsel for the petitioner now undertake to take notice to the first respondent asking him to produce the original partnership deed dated 21.01.2011 and original Modified Partnership Agreement dated 07.04.2011 which are available with the first respondent and thereafter, further orders can be passed. The petitioner is to take notice to the first respondent as per Section 66 of the Indian Evidence Act.

5. Considering the submissions made and perusal of the materials, this Court is inclined to admit this revision. Accordingly, the civil revision petition is admitted."



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3. The petitioner had taken private notice to both respondents as per Section 66 of the Indian Evidence Act calling upon them to produce the original documents of Ex.P1 & Ex.P2 which is in custody of the first respondent, however, both notices returned with an endorsement no such person. Affidavit of service produced.

4. The petitioner filed the petition in I.A. No. 3 of 2023 seeking permission to produce the photocopies of the partnership deed dated 21.01.2011 and modified partnership deed dated 07.04.2011 for marking as Ex.P1 and Ex.P2. The Trial Court dismissed the petition under Section 63 of Indian Evidence Act, against which the present petition filed.

5. It is seen that the partnership firm is unregistered one, hence the question of filing the registered partnership deed does not arise. Likewise, the petitioner contends that the original of partnership deed dated 21.01.2011 and modified partnership deed dated 07.04.2011 are in the custody of the first



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respondent. The first respondent set *exparte* from the initial stage and not participated in the proceedings before the Trial Court. Now, the present notice to the respondents returned with an endorsement no such person.

6. In view of the above, the impugned order dated 21.02.2024 in I.A.No. 3 of 2023 in C.O.S. No. 762 of 2022 passed by the District Judge, Commercial Court, Egmore, Chennai, is set aside. The District Judge, Commercial Court, Chennai is directed to permit the petitioner to mark photocopies of the partnership deed dated 21.01.2011 and modified partnership deed dated 07.04.2011 as exhibits in C.O.S.No.762 of 2022.

7. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

25.07.2024

Index : Yes/No

Internet : Yes/No

Speaking order/Non speaking order

Neutral Citation : Yes/No

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To

The District Judge,
Commercial Court, Egmore, Chennai



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M.NIRMAL KUMAR, J.

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