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A.No. 3075 of 2023

in

C.S. No. 290 of 2004

RESERVED ON: 22.11.2023

PRONOUNCED ON: .03.2024

A.A.NAKKIRAN, J.

ORDER

1.The application has been filed by the plaintiff to receive and mark the documents in the Civil Suit.

2. The applicant states that the trail in the above mentioned suit commenced before the learned Additional Master-I for marking of documents by the applicant the seven of the documents were not marked for the reason that the same were photocopies. When the suit was come up for hearing in the regular court the applicant requested the Hon'ble Court to permit the applicant to mark the photocopies of the document and the Hon'ble court directed the Learned Additional Master-I to receive the documents produced in evidence subject to proof, relevancy and admissibility in order dated 06.01.2023.



3. The 1st respondent preferred an O.S.A. No. 58 of 2023 before this Hon'ble High Court to set aside the 06.01.2023 order. Further, the 1st respondent has also filed C.M.P. No. 5498 of 2023 seeking an interim stay on effect and operation of the said order. On the order dated 15.03.2023, the Hon'ble Divisional Bench ordered that the applicant can file an application and affidavit before the trial court and that after receipt of objection, the trial court was empowered to take decision after hearing both the parties. The applicant filed this application for seeking leave to mark these documents in evidence.

4. Counter affidavit has been filed by the 1st respondent/defendant stating that the application is not maintainable as they have not laid any foundation for non-production of primary evidence either in plaint or proof affidavit. The seven documents sought to be marked are either allegedly addressed issued by the Applicant/plaintiff which is in the possession of some other person. The documents (a) to (f) have been allegedly issued either by me or 4th defendant. The above said six documents are false, fabricated, untrue and contrary to the facts. The



said documents ought not to be allowed to be marked as evidence in the suit. Further the document (g) sought to be marked is notice issued by the applicant/plaintiff and it is in fact in their possession, therefore the production of copies is unsustainable and the documents ought not to be marked as evidence. The applicant/plaintiff admits that the documents have been misplaced by them and due to their negligence they cannot seek protection under section 65(c) of the Indian Evidence Act at a belated after 19 years. The marking of such false documents may cause grave injustice and prejudice to the 1st and 4th defendant based on such fabricated documents. Hence, the respondents/1st defendant prays to dismiss the above said application with cost.

5. Heard both sides and perused the materials available on record.

6. The contention of the applicant is that when the trial in the above mentioned suit commenced before the learned Additional Master-I for marking of documents (a) to (g) by the applicant the documents were not marked for the reason that the same were photocopies. In the order



dated 06.01.2023 it is directed that the Learned Additional Master-I to receive the documents produced in evidence subject to proof, relevancy and admissibility. But in the order of the O.S.A. No. 58 of 2023 which was preferred by the 1st respondent it is ordered that “*the trial court empowered to take a decision after hearing both the parties*”. No prejudice or grave injustice shall be caused to the respondents by allowing the applicant to mark the photocopies of the above said documents in the suit as evidence. Hence, this Court is inclined to allow the above application.

7. In the result, the application is allowed. No costs.

18.03.2024

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A.A. NAKKIRAN, J

MSM/Lbm

Pre-Delivery Judgment in
A.No. 3075 of 2023
in
C.S. No. 290 of 2004

Delivered on
18.03.2024