



A.No.4259 of 2024
in C.S.No.2 of 2023

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Judgment reserved on 23.08.2024	Judgment pronounced on 29.10.2024
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RMT.TEEKAA RAMAN, J.

This application is filed by the plaintiff in C.S.No.2 of 2023 to permit the applicant's brother-in-law Dr.Pushparaja Sekaran to let in evidence as PW2 through video conference.

2. Counter has been filed by the respondent/defendant.

3(a) The present suit in C.S.No.2 of 2023 is filed claiming damages of Rs.1,00,00,000/- alongwith medical expenses for the treatment of the daughter of the plaintiff against the defendant hospital. As per the plaint, the plaintiff had only one daughter. It is further alleged that the only child of the plaintiff namely Miss Navya (born on 02.03.2005) got frequent fever during the August 2020 and it was then diagnosed that she was suffering from Leukemia. Immediately after diagnosis, she was admitted in the defendant hospital on 17.09.2020 and she was treated by the Dr.Hope Team headed by



Dr.Revathi Raj. Initially the doctors advised to undergo Chemo Therapy Treatment for four cycles and chemotherapy was given to his daughter.

During the first cycle of chemo therapy in progress, FLT-3 test was taken on 21.09.2020 and result of the same was recorded as 'negative' on 29.09.2020. Thereafter, after 20 days, on 19.10.2020 the defendant informed that they had mistakenly informed the FLT-3 result as negative but actually the result is positive.

3(b) The daughter of the plaintiff was admitted for the symptoms of Mucormycosis (black fungus) on 05.06.2021 and treatment was started only on 08.06.2021 and the plaintiff lost his only daughter on 16.06.2021 due to the gross medical negligence of the defendant. His daughter was admitted in the defendant hospital from 17.09.2020 to 16.06.2021 at eleven different times as inpatient and various test were taken during the above period, approximately Rs.76 lakhs were incurred for treatment during the tenure of her treatment.

4. Written statement has been filed by the sole defendant, issues have been framed and the matter is pending before the learned Master for recording of evidence. PW1 was examined. Now, the plaintiff seeks



permission of this court to examine his brother-in-law Dr.P.Pushparaja Sekaran, who is a doctor residing at 13 St. John's close, N144LF, London, United Kingdom (Passport Number P 2902214). Due to visa problem and other issues, it is stated that he is unable to appear in person and adduce evidence. Hence, the present application has been filed to examine the above said person on the side of the plaintiff as plaintiff's witness through video conference.

5. In the counter filed by the respondent hospital, it is stated that they have given best treatment on par with any other hospital in the world and this application to summon the witness at this stage of proceedings is both vexatious and an abuse of this court's time and process and prayed for dismissal of this application.

6(a) Mr.Maimoona Badsha, learned counsel for the respondent/defendant would contend that the description and the field of practice of witness Dr.P.Pushparaja Sekaran was not projected in the petition since the proposed witness whom the plaintiff intends to examine in response to defendant's question about consulting a doctor regarding the serious condition of acute myeloid leukemia (AML) with which the patient



was suffering. The absence of this crucial information raises significant concerns about the relevance and credibility of the proposed examination.

Given the complexity and severity of AML, it is imperative that any medical testimony be provided by a professional with appropriate expertise and specialization in oncology or paediatric haematologist.

6(b) The learned counsel further contended that without clear identification of the plaintiff's brother-in-law's medical qualification and field of practice, his examination as a witness would not be adequately grounded in the necessary medical knowledge to address the specific issues pertinent to this case.

7. It is to be stated that according to the plaintiff, the proposed witness is a doctor having competency and he is practicing in U.K. and the Passport Number is also mentioned in the affidavit. The points raised in the counter affidavit is expert evidence relating to the medical field which is relevant to the medical field which has to be put to the said witness during the cross examination when the said proposed witness is examined as PW2. Hence, I am not venturing into the various technical and medical issues that has been raised in the counter except to say that since the question



No.19 & 20 during the cross examination on 07.06.2024 was put to the PW1 by the defendant's side, in order to get and project the case of the plaintiff, the examination of the proposed witness is absolutely just and necessary.

8. Except observing the above, this Court is not expressing any opinion as to the competency of the proposed witness by the plaintiff on the medical field to speak about question Nos.19 & 20 in the cross examination as referred in the petition. The same is left open for determination in the main suit. Since the identity of the proposed witness has been disclosed by way of Passport Number P 2902214, I find that in the interest of justice, the applicant has to be permitted to examine the person. Due to visa problem, the applicant has expressed that the witness could not come in the physical mode and hence may be permitted to examine through video conference, subject to the video conferencing rules of this Court in regard to recording of evidence. A copy of the passport and any address like permanent address, PAN card and medical competency certificate regarding the alleged special knowledge of PW2 in the cancer filed to be produced by the proposed witness.



9. With the above observation, this application is allowed. Post the main suit before the learned Additional Master – III for recording the evidence of PW2 on 20.11.2024. The time limit will be fixed by the learned Master as per the High Court Video Conferencing Rules.

29.10.2024

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RMT.TEEKAA RAMAN, J.

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order in
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