



A.Nos.4793 & 4794 of 2024

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in

C.S.No.31 of 2010

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K.KUMARESH BABU.J.,

A.No.4793 of 2024 had been filed to reopen the evidence of DW1 in the Suit. A.No.4794 of 2024 had been filed to recall the evidence of DW1 in the Suit.

2. Heard Mr.A.Saravanan, learned counsel appearing for the applicant and Mr.P.R.Raman, learned Senior counsel appearing for Mr.C.Seethapathy, learned counsel appearing for the first respondent.

3. The learned counsel appearing for the applicant would contend that on the day when it was listed for filing of proof affidavit of the applicant, the applicant was away from Chennai and was not able to appear before the learned Master for filing his proof affidavit and making himself available for recording of evidence. He would also submit that the reason for not filing the proof affidavit was that the applicant had intended to take application to implead the third parties to the Suit. He would submit that non-appearance was neither wilful nor wanton. He would further undertake to appear on the



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days fixed by this Court before the learned Master for completion of his side of evidence and also file the written arguments in the schedule fixed by the Court. He also undertakes that if the schedule for examination as fixed by the Court is not adhered to by the applicant, then the evidence on the side of the applicant can be treated as closed and he will not seek to reopen his side of evidence again.

4. Mr.P.R.Raman, learned Senior counsel appearing for Mr.C.Seethapathy, learned counsel appearing for the first respondent on the other hand would contend that the Suit summons were served in the year 2010 and inspite of service of Suit summons, the third defendant had failed to appear. Since, the third defendant failed to appear, he had been set *exparte*. In the application, where an interim order was granted against the applicant was also made absolute on 15.03.2017. The applicant had continued to violate the interim order of this Court against which the Contempt Petition in Cont.P.No.1587 of 2022, had been filed and the same is also pending. He would also contend that after a period of 12 years, an application to set aside the *exparte* order was filed by the applicant and the same was allowed. The PW-1 was examined on the side of the respondent/plaintiff and documents



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were marked. Even for cross examination of the third defendant had taken longer duration and finally was completed on 24.04.2024. Since the applicant had chosen not to complete the cross examination of PW-1, the evidence of PW-1 was closed, however by orders of this Court on 24.06.2024, the applicant was permitted to cross examine PW-1 and also to file proof affidavit on or before 27.06.2024. The applicant had cross examined PW-1 on 28.06.2024, but failed to file his proof affidavit and therefore, time had lapsed. Recording the same, this Court had directed the parties to file written submissions and at this juncture, the present application had been filed. He would submit that these are dilatory tactics to continue to exploit the copy rights belonging to the first respondent and also violating the order of this Court. Hence, he would submit no indulgence need to be granted and he would seek direction of this Court to the applicant to submit his oral or written arguments in the main suit itself.

5. I have heard the rival submissions made by the learned counsel appearing on either side and perused the materials placed on record.

6. It is true that there has been a considerable delay on the part of the



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applicant in the conduct of trial in the Suit. He had been permitted to file his written statement and if he is not permitted to put forth his part of evidence, then it would cause serious prejudice to him.

7. In such circumstances, I am inclined to pass the following order:-

The applicant herein shall file proof affidavit on 11.11.2024 and record his evidence in chief by filing of proof affidavit and also the necessary documents, he shall make himself available for cross examination on the dates that would be convenient to all including the learned Master recording the evidence. However, the cross examination shall be completed on or before 22.11.2024. If at any instance, the examination cannot be conducted at the instance of the applicant herein, his evidence shall be closed.

8. List the matter on 29.11.2024 for filing written arguments.

9. With the aforesaid direction, the applications stand disposed of.

21.10.2024

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Internet: Yes/No

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