Application Nos.5913 to 5915 of 2023 in C.S.No.829 of 2013
and
C.S.No.829 of 2013

P.VELMLURUGAN, J

The plaintiffs have filed the present suit in C.S.No.829 of 2013 praying to pass judgment and decree:

(a) to direct the defendants, jointly and severally to pay the plaintiffs a sum of Rs.1,72,92,000/- along with interest at the rate of 24% per annum from the date of the plaint till the date of realisation;

(b) to declare that the document styled as "Guarantee Affidavit cum Indemnity" dated 21.10.2010 signed by the plaintiffs, in favour of the defendants, as null and void;

(c) to direct the defendants, jointly and severally to deliver the plaintiffs the documents as listed in Schedule-B given under the plaint; and

(d) to pay the costs of the suit.

2. Pending the above suit, these three applications have been filed:

(i) Application No.5913 of 2023 in C.S.No.829 of 2013: to receive the additional documents mentioned in the application, i.e., Certified copy of cross examination of P.W.1 in C.C..No.398 of 2014, dated 31.07.2023, certified copy of the sale agreement cancellation deed Doc.No.2170 of 2010, dated 26.10.2010, certified copy of the sale agreement cancellation deed Doc.No.2171 of 2010, dated 26.10.2020, certified copy of the sale agreement cancellation deed Doc.No.2172 of 2010, dated 26.10.2010 and photostat copy of statement of accounts showing the transactions between the plaintiff and the defendants.

(ii) Application No.5914 of 2023 in C.S.No.829 of 2013: to recall P.W.1 for deposing evidence.

(iii) Application No.5915 of 2023 in C.S.No.829 of 2013: to order re-open of the plaintiffs' side evidence.

3. The first applicant in these applications, is the first plaintiff in the suit and the second applicant is his wife and the applicants 3 and 4 are the parents of the first applicant. The defendants 1 to 3 have filed their written statement on 02.09.2018 and this Court framed the following issues on 21.06.2018:

(i) Was there an arrangement in the nature of Joint Venture with an open, mutual and current account between plaintiffs and defendants ?

(ii) Whether the Agreements of Sale executed by the plaintiffs in favour of defendants were intended to be acted upon as Agreements to sell the properties ?

(iii) Whether the plaintiffs handed over the Title Deeds to the defendants as mentioned in the Schedule-B of the plaint ?

(iv) Whether the Agreements of Sale were supported by consideration ?

(v) Whether the Cheques signed by the plaintiffs were blank cheques subsequently filled up by the defendants without any liability ?

(vi) Whether the Document, "Guarantee Affidavit cum Indemnity" dated 21.10.2010 was executed by the plaintiffs under threat and coercion and is null and void ?

(vii) Is not the plaintiffs admitted the liability in "Guarantee Affidavit cum Indemnity" dated 21.10.2010 ?

(viii) Whether the defendants are liable to return the Documents of Title to the plaintiffs as per the list given in Schedule-B of the plaint ?

(ix) Whether the defendants are liable to pay the sum of Rs.1,72,92,000/- or any other amount to the plaintiffs along with interest at 24% per annum ? and

(x) To what other reliefs the parties are entitled to?

4. As per the order of this Court, the suit was posted before the learned Master for recording evidence from 09.07.2018. The first plaintiff entered into the witness box and tendered evidence on 28.09.2018 as P.W.1 and the defendants raised their objection by endorsing in the proof affidavit of P.W.1, for marking the particular document -- copy of the "Guarantee Affidavit cum

Indemnity", dated 21.10.2010, Ex.P-13 stipulating that the said original is with the plaintiffs. In this connection, the defendants' intention has made it clear that the said Guarantee Affidavit cum Indemnity is dated 21.10.2010 and the documents/exhibits marked on the side of the plaintiffs, namely Exs.P-1 to P-15 and Ex.P-13 was marked with objection by observing that both the plaintiffs and defendants claim that the original is with the other and the learned Additional Master allowed the plaintiffs to mark Exs.P-1 to P-15 on 28.09.2018 and photostat copy was filed and marked as Ex.P-13 with plaintiffs' averment that the defendants are having the said original. The said photostat copy is seen that it has been handed over to the plaintiffs by the defendants, wherein there is no No Notary signature. But the defendants filed proof affidavit and marked Ex.D-2 - photostat copy of the Guarantee Affidavit cum Indemnity on 19.09.2019, from which the following are clear:

(i) the stamp paper is purchased from the stamp vendor Vijayalakshmi of Chennai, from whom the defendants have purchased;

(ii) the photostat copy Ex.D-2 marked by the defendants is the photostat copy taken from the original document Guarantee Affidavit cum Indemnity, reflects the seal of the Magistrate Court, dated 05.05.2011, the un-marked document (said to be inserted in the complaint bundle or filed after the date of presentation of the complaint in C.C.No.1809 of 2011);

(iii) There is a signature of the Notary Sri Deenadayalan, of Chennai, well known person only to the defendants;

(iv) Paragraph 6 of the said document stipulates Schedule Annexure 1 to 4, but there are no annexures enclosed, which is also mischievous activity of the defendants; an

(e) The said original document Guarantee Affidavit cum Indemnity was with the defendants only and it has been marked in the Magistrate Court in C.C.No.1809 of 2011 as Ex.D-1 through P.W.1 complainant on 03.09.2012.

5. Thus, according to the applicants, is it clear that the defendants mis-represented before this Court by committing an act of mischief stating that the original is not with the defendants, but have chosen to mark the same original in the criminal case.

6. The defendants have commenced their cross-examination of P.W.1 from 04.12.2018, continued on 28.01.2019, 28.02.2019, 25.03.2019 and completed on 18.06.2019. The first defendant entered into the witness box and gave evidence on 19.09.2019 as D.W.1. On the defendants' side, 7 documents - all photostat copies were marked as Exs.D-1 to D-7 from 17.09.2019, out of which, Ex.D-2 is the photostat copy of the Guarantee Affidavit cum Indemnity, dated 21.10.2010. Ex.D-1 is the alleged photostat copy of the Statement of

Accounts, which is not genuine and not challenged. Ex.D-7 is the alleged details of the debtors allegedly submitted by the defendant to the Income Tax Department, but it also lacks genuineness and it is not also challenged. The applicants do not know as to why the said three documents are not challenged either by the Court or any one on the applicants' side. The cross-examination commenced on 04.12.2019, but subsequently, the pandemic period of Covid-19 interfered and it came to an end only in September 2022. The cross of DW.1 continued from 05.09.2022, 13.03.2023, 14.03.2023 and evidence of D.W.1 completed on the same day.

7. The written arguments are filed on the side of the plaintiffs on 11.2023 and on the side of the defendants, the written arguments were filed on 19.07.2023. The applicants/plaintiffs were given the copies of the written arguments and on a perusal of the same, the applicants are totally not satisfied with the conduct of the proceedings on the side of the plaintiffs and further, the evidence is not at all let in on the basis of the pleadings/exhibits marked and issues framed by the Court. Therefore, after having valid and proper legal advise, the applicants are forced by the circumstances to change their counsel in the suit on the basis of change of Vakalat and hence, thereafter, these three applications are filed.

8. There are contradictory statements/evidence let in by the first

defendant D.W.1 in the suit and P.W.1 in the criminal cases, and there is necessity for the applicants to produce those statements and evidence for the purpose of the present suit and hence, the recording of evidence needs to be re-opened.

9. Further, the documents/exhibits have been marked in the criminal cases and further the cross-examination conducted recently in the years from 2022 and therefore, those exhibits and evidence, certified copies are necessary to prove the applicant's case in the above suit.

10. On the basis of the issues, the applicants may be permitted to narrate as to why the necessity to reopen the above suit, for adducing additional evidence by receiving additional documents. The first issue is regarding arrangement in the nature of joint venture with mutual and current account between the plaintiffs and defendants. There is admission on the part of the defendants/complainants in the criminal cases, that there was mutual arrangement on the part of them of the business of both the plaintiffs and defendants. The plaintiffs business is Medical shop and Real Estate field and the defendants business is Finance lending. Both have come to an arrangement from the year 2009 an there were contributions offered by the plaintiffs and defendants. Further, the exhibits marked on the side of both parties and the evidence will also prove that there was mutual arrangement between both the

families and for that purpose, the said documents and evidence, needs to be filed and marked as additional documents to prove and for answering the first issue in particular. In the FIR lodged before the Police Department, the first defendant has stated that he is doing the business and finance and Real Estate (Ex.D-3). In the alleged Ex.D-1, the statement of accounts, though it is not genuine document and inadmissible in evidence, as it is not proved by any voucher/receipt/pro-note or any means of debt. The defendants depose that from the year 2009 to 31.03.2010, in the manner of alleged reflected transactions, they have paid to the plaintiffs a sum of Rs.1,95,10,000/-. In the manner of the non-reflected transactions, the defendants say that they have paid to the plaintiffs several amounts from 2010 to March 2013. The defendants show their debits, but there is no proof that they are credited in the accounts of the plaintiffs. The defendants contended that they have made payments as loan to the tune of Rs.7,87,80.55/- and the same has not been supported with any voucher/receipt/pro-note or any means of debt. In the same way, Ex.D-7 being the copy of debtors submitted to the Income Tax Department by the first defendant, though it is not genuine document inadmissible in evidence, as it is not proved by any voucher/receipt/pro-note or any means of debt. The defendants depose that on 24.09.2013, they have paid to the plaintiffs a sum of Rs.7,55,00,000-. With regard to this, there is additional evidence through the documents and evidence in the criminal Courts and those evidence needs to be filed and marked to prove the applicants' case and therefore, for that purpose, the case may be re-opened.

11. With regard to the second issue regarding the sale agreements by the plaintiffs, favouring defendants intent to be acted upon as agreements and/or whether the sale agreements supported by consideration, more-fully referred to in the 2nd and 4th issues, the sale agreements marked as Exs.P-1 to P-9 in the present suit, the value of the property is slightly higher than the guideline value mentioned, but not received by the plaintiffs on the real facts, that the sale agreements/Exhibits-stamp papers were purchased from the stamp vendor Smt.Saraswathi, of Triplicane of Chennai, that too in the name of the respective purchaser stipulated in the agreement. It is clear from the said agreements that they are drafted by self but except signature, the person drafted the said agreements do not show the name, seal and licence-holder particulars, etc., which are necessary for registering any instrument. So, the influence the defendants have with the SRO Office has made to influence such documents. Further, the person who has signed as drafted by self, is the first executant (seller). The real fact is that the signatory in the drafted column does not know that the said executant has drafted the document and they do not know to draft such document. While that being so, when there is no possibility of drafting a

document, it is made clear that for creating the said agreements, the defendants have exercised undue influence, coercion to get the document registered with the collusion with the SRO, by forcing the plaintiffs to execute the sale agreements without consideration. The plaintiffs came to know that among the said sale agreements, it seems that three agreements have been cancelled on 26.10.2010, which fact is not at all known to the plaintiffs. After obtaining cancellation of the three sale agreements, the defendants have obtained another two sale agreements afresh, on the same day. So, the defendants have made the plaintiffs as puppets by threat and coercion and have made to sign all the drafted and blank papers, to threaten the plaintiffs to pay the demanded amount. The three cancellation deeds, dated 26.10.2010 came to be known to the plaintiffs only in August 2023 and hence, certified copy of the said cancellation of the three sale agreements are obtained through online and they are need to be marked before this Court as exhibits.

12. The three sale agreements, dated 13.07.2009, 11.08.2009 and 08.01.2010 (Exs.P-1, P-2 and P-3), even after cancellation, were marked in the Court and even at that time, the defendants have not enlightened the plaintiffs or even before the Court. The defendants kept the plaintiffs in dark, obtaining signatures in the papers to suit their convenience and totally suppressed the cancellation of the above said three agreements. The three cancellation deeds -

certified copies obtained by the plaintiffs on 03.08.2023, reveal that they are dated 26.10.2010, the stamp papers therein are purchased from the stamp vendor Vijayalakshmi of Kodambakkam, the well-known person to the defendants, that the second plaintiff is the first party who has signed in the sale agreements, dated 13.07.2009 and 11.08.2009 and only the defendants have managed to get the second plaintiff's signature in the third cancellation deed, which is not correct, that the first plaintiff is the first party who is the signatory in the sale agreement, dated 08.01.2010, that the second party is second defendant, the signatory in the three sale agreements, that the recital in the cancellation deeds is that the second party cancels the sale agreement, but not the first party, the plaintiffs, which is not correct and not heard of, that the reason stipulated for cancellation is that the balance consideration is not paid by the defendants, and that the document drafted is not stipulated left blank even though there is seal.

13. So, the influence the defendants with the SRO office, has the defendants to create the sale agreements and cancellation deeds and it is clear that they are made for by exercising undue influence, with the SRO by forcing the plaintiffs to sign in the sale agreements and cancellation deeds to play to the tune of the defendants. Hence, according to the applicants, in the interest of justice, it is just and necessary for the defendants to file the application to re-

open the case and to recall PW1 for marking the cancellation deeds stated above, and the necessary evidence on record recorded by the Courts.

14. With regard to the third issue, regarding the original title deeds handed over by the plaintiffs to the defendants, and with regard to the eighth issue regarding the plaint relief of return of documents listed in Schedule-B to the plaint, it is stated by the applicants that in the written statement in paragraph 3, it is quoted that, since the defendants were also in possession of the original title deeds, the defendants made payments and in para 19, it is quoted that the defendants 1 to 3 have got deposit of the original title deeds as security for the financial facilities availed by the plaintiffs, while recording the evidence, the applicants quoted various questions and answers posed during the recording of the evidence of the witnesses--P.W.1 and D.W.1, and to prove the case of the plaintiffs and to enable this Court to give a finding on the issues 3 and 8, it has become necessary for the plaintiffs, to file the application to re-open and recall P.W.1 for producing the documents stated above and also for marking the evidence of the other Courts (Criminal Courts).

15. With regard to the third issue regarding the cheques of the plaintiffs' blank and filled up by defendants without liability, the applicants herein refers to paragraph 13 of the plaint and paragraph 21 of the written statement and also the evidence of D.W.1. So, from the circumstances mentioned in the evidence

to prove the plaintiffs with regard to the blank cheques issued and no liability on the basis of the said cheques, the evidence of the defendants in various Criminal cases needs to be obtained certified copies and marked in the case and for that purpose, the above suit may be re-opened.

16. With regard to the sixth issue regarding the document "Guarantee Affidavit cum Indemnity", dated 21.10.2010 obtained from plaintiffs by threat and coercion and with regard to the seventh issue regarding the admission of the plaintiffs in the Guarantee Affidavit cum indemnity, dated 21.10.2010, the applicants rely on paragraphs 17 and 18 of the plaint and the evidence of D.W.1, P.W.1. Further, it is the further case of the applicants that the plaintiffs preferred a Police complaint on 01.12.2011 seeking Police protection, but in April 2011, the defendants started instituting false criminal cases by high-handedly filling up the blank cheques and during such time, the plaintiffs were forced to PAY excess amount of Rs.40 lakhs between May and August 2011 and on 11.11.2011, the defendants preferred a Police complaint against plaintiffs making of the guarantee affidavit cum indemnity. The plaintiffs did not pay as undertaken and when questioned, they issued the cheques and they were presented, but dishonoured and thereby criminal cases have been filed. Apart from the above criminal cases, a criminal case has been on the basis of the defendants' complaint on 11.11.2011 registered in Crime No.77 of 2011, later,

after investigation, final report has been filed in C.C.No.398 of 2014 has been filed. The applicants herein rely on the proof affidavit of D.W.1, evidence in cross of P.W.1 and D.W.1 and presumptions clear from the guarantee affidavit cum indemnity and that the stamp paper is purchased from the stamp vendor Vijayalakshmi of Chennai, from whom the defendants have purchased. Further, the photostat copy Ex.D-2 marked by the defendants on 19.09.2019 is the photostat copy taken from the original document Guarantee affidavit cum indemnity, which reflects the seal of the Magistrate Court, dated 05.05.2011 and the un-marked document (said to be inserted in the complaint bundle or filed after the date .02.2011, the date of compliant in C.C.No.1809 of 2011. There is signature of the Notary Sri Deenadayalan of Chennai, well known only to the defendants. Paragraph 6 of the said document stipulates schedule annexure 1 to 4, but there are no annexures enclosed, which is also the activity of the defendants. The said original document Guarantee affidavit cum indemnity, was with the defendants only and it has been marked in the Magistrate Court in C.C.No.1809 of 2011 as Ex.D-1 through P.W.1 complainant on 03.09.2012. Ex.D-2 in the suit is the photostat copy of the guarantee affidavit cum indemnity, dated 21.10.2010. So, the defendants misinterpreted before this Court by committing an act of mischief saying that the original is not with them, but have chosen to mark the same original in the criminal case. Further, the defendants have admitted in the cross-examination in the criminal case that the said indemnity bond document was prepared by them, and they obtained signatures in the office of the T.Nagar MLA, which goes to show that there is presumption of threat and coercion. Three is clear presumption that the plaintiffs since have not signed with free volition, they have not received any such amount stipulated in Ex.D-2, the signatures obtained by them is only high-handed action of the defendants and hence, there is no admission by the plaintiffs 1, 3 and 4 to pay the said alleged amount in Ex.D-2. In the plaint, in paragraph 17, it is stated that on 21.10.2010, the plaintiffs were forced to sign a document styled "guarantee affidavit cum indemnity" in favour of the defendants. In the presence of the Police, before the Police Station, the plaintiffs were forced to sign and on such signing the said bond, they promised to return four title deeds and in paragraph 18 of the plaint, it is stated that the said indemnity was signed by the plaintiffs due to coercion exercised by the defendants through Police. The plaintiffs preferred a Police complaint on 11.02.2011 seeking Police protection, but in April 2011, the defendants started instituting false criminal cases by high-handedly filling up the blank cheques. During such time, the plaintiffs were forced to pay excess amount of Rs.40 lakhs between May and August 2011 and on 11.11.2011, the defendants preferred a Police compliant against the plaintiffs making use of the guarantee affidavit cum indemnity.

17. In the written statement of the defendants, it is stated in paragraph 6 that the plaintiffs executed guarantee affidavit cum indemnity dated 21.10.2010 in favour of the defendants and from it stipulated that they will repay the money after selling the property as per clauses 1 and 2 therein. But the plaintiffs did not pay as undertaken and when questioned, they issued the cheques and they were presented, but dishonoured and thereby, criminal cases have been filed. Apart from the above criminal cases, a criminal case has been on the basis of the defendants' complaint on 11.11.2011 registered in Crime No.77 of 2011 and later, after investigation, final report has been filed in C.C.No.398 of 2014 has been filed.

18. The applicants rely on proof affidavit of D.W.1, cross of D.W.1 and the evidence of P.W.1-Chief and cross. The evidence in the present suit and criminal cases--clear from the guarantee affidavit cum indemnity, which was not executed by the plaintiffs in free volition, which reveals that the defendants have admitted in their cross-examination before the Criminal Court that they have given the alleged loan amount of Rs.5,67,70,000/- by way of both cash and cheque on 21.10.2010 to the plaintiffs, but they have not proved by any documentary evidence to the said alleged loan amount, that the defendants say that they have obtained the pro-note and indemnity bond from the plaintiffs on 21.10.2010, that the stamp paper is purchased from the stamp vendor

Vijayalakshmi on 14.10.2010 at Chennai in the name of the first defendant, which reveals the pre-plan of the defendants to obtain signature from the plaintiffs for the alleged loan amount, which factually was not paid by the defendants, that the photostat copy Ex.P-13 was marked by the plaintiffs on the footing that the original is with the defendants, but the defendants purposely to play mischief on the Court and on the plaintiffs, made endorsement that the original is not with them, that the said Ex.P-13 is with the signatures of the plaintiffs 1, 3 and 4, but there is no Notary seal, which goes to show that it is not signed before the Notary Public, that the photostat copy Ex.D-2 marked by the defendants on 19.09.2019 taken from the original document guarantee affidavit cum indemnity, reflects the seal of the Magistrate Court, dated 05.05.2011, the un-marked document (said to be inserted in the complaint bundle or filed after the date .02.2011 the date of compliant) in C.C.No.1809 of 2011, that there is signature of Notary Sri Deenadayalan, of Chennai, well known only to the defendants and it is clear that the said indemnity bond was prepared and the signatures were obtained by the defendants by threat and coercion with the pre-planned activities and which presumes that the plaintiffs have not signed with free volition and because there is signature of the plaintiffs, it does not presume that they have consented for payment of the said alleged loan amount alleged, narrated in Ex.D-2. Further, paragraph 6 of the said document stipulates

Schedule Annexures 1 to 4, but there are no annexures enclosed, which is also the activity of the defendants and non-enclosure of the said annexures reveal that the said document is invalid and no acted upon, that the said original document Guarantee affidavit cum indemnity bond was with the defendants only and it has been marked in the Magistrate Court in C.C.No.1809 of 2011 Ex.P-1 through P.W.1 complainant on 03.09.2012. So, the defendants misrepresented before this Court by committing an act of mischief saying that the original is not with the defendants, but have chosen to mark the same original in the criminal case.

19. Further, according to the applicants herein, the defendants have admitted in the cross-examination in the criminal case that the said indemnity bond document prepared by them, obtained signatures in the office of the T.Nagar MLA which goes to show that there is presumption of threat and coercion. There is clear presumption that the plaintiffs since have not signed with free volition, they have not received any such amount stipulated in Ex.D-2, the signatures obtained by them is only high-handed action of the defendants and therefore, there is no admission by the plaintiffs 1, 3 and 4 to pay the said alleged amount in Ex.D-2. Therefore, it is just and necessary that the evidence of the defendants the complainants in the criminal cases, the certified copies need to be marked to prove the case of the applicants with regard to the blank

cheques without any liability and for that purpose, the above case may be re-opened.

20. Further, with regard to sixth issue regarding the plaint relief, directing the defendants to pay a sum of Rs.1,72,92,000/- with interest. The plaintiffs have filed a detailed accounts of calculations and contributions/payment made by the plaintiffs and the defendants and it may be received as additional documents. In the above said facts, the sale agreements entries reveal from entries 1, 2, 4, 8, 15, 16, 36 and 37 and the sale agreement entries total entries 8, alleged amounts paid was Rs.6 crores 75 lakhs. The plaintiffs dispute that no such amount was received by them and the defendants have also not proved any documentary proof to show that they have paid such amounts covering the sale agreements. The case of the plaintiffs is that the sale agreements are the documents executed and registered without consideration by threatening the plaintiffs to sign with threat and coercion. That is why the defendants have cancelled the sale agreements on their own without concurrence of the plaintiffs. Since no consideration passed and the defendants have not proved that they have paid the consideration stipulated in the sale agreements, the activities of the defendants, in either making the plaintiffs to execute/register the sale agreements, in taking the plaintiffs to join the defendants to cancel the sale agreements, without getting the document drafted by appropriate licence

holder, influencing the registration authorities imply that the consideration is not passed and there is coercion and influence exercised upon the plaintiffs for execution and registration of the sale agreements.

21. Further, in their proof affidavit of P.W.1, they have detailed the payments made by them, list and bank statements enclosed, which show the correct details and the same is narrated in the above item Nos.3, 5, 6, 7, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38, 39, 40, 41, 42, 43 - altogether 35 entries, total amount is Rs.3,63,42,000/-, which the defendants in their written statement and proof affidavit have admitted the receipt of the amounts paid by the plaintiffs. In the same proof affidavit of the plaintiffs, they have detailed 20 items of payments made by the defendants, totally, the plaintiffs have received Rs.1,90,00,500/-. The defendants averred in their written statement and their proof affidavit that they have given loan amount of Rs.7,87,80,055/- (for which the defendants have not proved by documentary evidence) and through the sale agreements, the defendants have paid the consideration amount of Rs.6,75,00,000/-. In the same way, the defendants have not proved by documentary evidence--except the plaintiffs' admitted amount of Rs.1,90,50,000/- and the total amount said to be allegedly paid is Rs.14,62,80,055/-, less, the defendants admit that the plaintiffs' payments is Rs.3,63,42,000/- and after deductions, the alleged balance the

defendants say that the plaintiffs are due, Rs.10,99,38,055/-. But the defendants did not make any such claim till date, though they stipulate in their written statement and proof affidavit.

22. It is the main averment of the applicants herein that total contrary stand has been taken by the defendants against the plaintiffs and that all the above calculations, the defendants had forgotten and cleverly obtained signature of the plaintiffs 1, 3 and 4 in the ready-made, prepared, manipulated document, guarantee affidavit-cum-indemnity bond, defendants in Ex.D-2 and claims that the plaintiffs are liable to pay Rs.5,67,70,000/-, which figure no one knows that how the defendants have arrived at. Further, the defendants said that on 21.10.2010, they have given the said amount on the single day obtained a pro-note and indemnity bond for the said amount, and therefore, the defendants have been claiming the said amount by making use of the blank signatures in the stamp papers, blank cheques and particularly, in the indemnity bond obtained by them under threat and coercion, according to their version in the presence of the T.Nagar MLA. On this aspect, the issues regarding the said indemnity bond dated 21.10.2010 Ex.D-2 are sufficiently may be answered. But the contributions from the plaintiffs and defendants are, as per the list, the plaintiffs' contribution is Rs.3,63,42,000/-, less, as per the list, the defendants' contribution is Rs.1,90,50,000/-. The balance payable and that is the claim of the

plaintiffs at Rs.1,72,92,000/-.

23. Thus, the applicants pray that if they are not permitted to mark the documents mentioned in the prayer above, they will be put to irreparable loss and injury and the respondents herein will not be put to any prejudice in marking the said document and therefore, the evidence may be re-opened and may be re-called for marking the documents.

24. Learned counsel for the applicants/plaintiffs submitted that the certified copies of some of the proceedings in the earlier case and also the agreement of sale etc., are sought to be marked and therefore, these applications have been filed.

25. Learned counsel for the respondents/defendants submitted that all the documents were already available with the plaintiffs and they were also aware of the proceedings and these applications have been filed after completion of pleadings and framing of issues and that the trial had already commenced and it went for a long time and after completion of trial, the suit was listed for making oral submissions and the plaintiffs have filed the present applications relying on the decisions of the Supreme Court reported in the case of (i) K.K.Velusamy Vs. N.Palanisamy, reported in 2011 (11) SCC 275 and (ii) Sudhir Kumar @ S.Baliyan Vs. Vinay Kumar G.P., reported in AIR 2021 SC 4303.

26. Heard the learned counsel for the defendants on the above issues.

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

28. Though the suit was filed in the year 2013 earlier before the non-commercial division, subsequently, when the Commercial Courts Act came into force in the year 2015, the Commercial Division of the Original Side of this Court was established and the suit was transferred from the non-Commercial Division to the Commercial Division. After completion of pleadings and framing of issues and after both the parties have filed case management schedule, based on which, the suit was referred to the learned Master/Additional Master for recording evidence and even the proceedings of the learned Master show that trial went on quite for a long time and not strictly followed day-to-day affairs. After the evidence was closed, the suit was listed for filing written submissions and to make arguments. At this stage, these three applications have been filed by the plaintiffs and they have not come forward with the arguments and have changed the counsel and the documents that are sought to be marked, are very much available with the plaintiffs as contended by the defendants, even prior to the filing of the suit and the cause of action as alleged by the defendants.

29. Order XIV of the Madras High Court Original Side Rules deals with "interlocutory applications" and Rule 8 therein reads as follows:

> <u>Rule 8:</u> <u>Applications to be filed before Judge</u>: All applications other than those mentioned in Rule 10 *infra* shall be disposed of by a Judge; Provided that a

Judge may refer any matter brought before him under
this rule to a Division Bench."

30. All the documents have to be filed along with the plaint itself, and if any, within 30 days and if it is beyond his control and for any reason after filing written statement after the knowledge of the plaintiffs. The plaintiff is only the control of the defendants or other third parties, but none of the averments shows that the applicant was not aware of those documents an also the documents are under the control of the defendants and the applicants were prevented from filing those documents and now only, the plaintiffs is free from filing these documents. Therefore, in the above circumstances, allowing the applications is nothing but mockery of justice and it would defeat the object of the Commercial Courts Act. It is only an abuse of process of law and these applications were filed only to protract the proceedings and that there is no merit in these applications. Further, this Court is not satisfied with the reasons stated in the affidavits filed in support of the applications. Accordingly, A.No.5913 of 2023 filed to receive the additional documents, is dismissed. In view of the same, the applications filed to recall and re-open the evidence of P.W.1, shall also stand dismissed.

31. Both the parties are directed to file their written submissions, if not

already filed, on or before 09.07.2024. List the suit for hearing on 09.07.2024.

21.06.2024

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P.VELMLURUGAN, J

cs

A.Nos.5913, 5914 and 5915 of 2023

in C.S.No.829 of 2013

and

C.S.No.829 of 2013

21.06.2024