



C.R.P.No.4835 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 29.11.2024

CORAM:

THE HON'BLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.4835 of 2024

and

C.M.P.No.26982 of 2024

Pelita Nasi Kandar International (P) Ltd.,
No.16, 17 and 18, New No.27, Sir Thyagaraya Road
T.Nagar, Chennai – 600 017

... Petitioner

-Vs-

1. Sri Venkatachula Flat Owners Association
Represented by its Secretary
No.16,17, New No.27, Sir Thyagaraya Road,
T.Nagar,
Chennai -600 017.

2. T.Shanmuga Priya

3. T.Anuradha

4. T.Senthil Kumaran

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Order/ Proceeding dated 07.11.2024 in the trial made in O.S.No.3727 of 2022 on the file of the IV



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Additional District Judge, City Civil Court at Chennai and allow the Civil Revision Petition enabling the petitioner herein to mark copy of admitted documents by the plaintiff witness PW-1 during cross examination, as defendant side Exhibits.

For Petitioner : Mr.A.K.Sriram
Senior Counsel
For Mr.A.Thayaparan

For R1 : Mr.S.Saishankar

ORDER

This Civil Revision Petition arises against the order passed by the learned IV Additional District Judge, City Civil Court at Chennai in O.S.No.3727 of 2022 dated 07.11.2024.

2. The Suit is for recovery of money and for several other reliefs. The dispute between the parties had arisen on account of usage of common area by the 5th defendant. The defendants 1 to 4 are co-owners of the property with other apartment owners. The Apartment Owners Association is the plaintiff in the suit. The plaintiff had issued notice on 13.05.2003 calling upon the defendants 1 to 5 to pay the compensation of



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Rs.35,000/- per month for use and occupation of the 'A' Suit Schedule mentioned property. The said notice had been enclosed as plaint document No.7.

3. The plaintiff attempted to mark the document, but he was not permitted by the Court. During the course of the cross examination by the 5th defendant, he confronted the PW1, the Joint Secretary of the Plaintiff Association, with the lawyers notice. PW1 had admitted to the said document. This is clear from the record of deposition dated 07.11.2024. P.W.1 has stated that he had infact issued the said notice. However the learned Judge had refused to mark the document on account of the fact that the plaint document is a photostat copy.

4. In terms of Section 65(b) of the Indian Evidence Act, the secondary evidence of the document can be adduced when the contents of the original have been admitted in writing by the person against whom it is proved or by his representative in interest. The Court has recorded the fact on 07.11.2024, that the PW1 has admitted that he had issued noticed dated 13.05.2003. When the parties are *ad idem* with respect to the nature and



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contents of the document, let not technical pleas be thrown at the parties to disallow them from receiving the documents in the Court.

5. The purpose of receiving a primary evidence from a party, is to protect the adversary from being taken by surprise. That situation does not exist arise here, as on 07.11.2024, the plaintiff himself as admitted to the documents.

6. This Court in **M.Kempaiah & anr. Vs. Akkammal & anr, C.R.P.(PD).No.1116 of 2014** dated **20.01.2016** had held that any document or any scrap of paper can be marked through a witness, at the time of cross-examination, when the document is admitted. This view finds an echo in **Mohammed Aleemuddin Vs. Anney Vishwanath Rao, C.R.P.No.1355 of 2018** dated **02.04.2018 (AP)**.

7. Further, no prejudice is going to be caused to either parties by receiving the document. Hence, I do not find any reason as to why it should be rejected.



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8. Accordingly, the Civil Revision Petition is allowed. The Court shall receive the document as exhibit on the side of the plaintiff, marked during cross examination, by the 5th defendant. Consequently, connected miscellaneous petition is closed. No costs.

29.11.2024

Index : Yes/No

Speaking Order : Yes/No

Sma / krk

To

IV Additional District Judge,
City Civil Court at Chennai.

V.LAKSHMINARAYANAN, J.



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