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C.R.P.No.831 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.03.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.No.831 of 2025
&
C.M.P.No. 4969 of 2025

K.Ravichandran

...Petitioner

Vs.

ABS Instruments Pvt Ltd
Rep by its Managing Director
Mr.P.N.Saisankar
Unit 21, Block 1, SIDCO Electronic Complex,
Thiru Vi Ka Industrial Estate,
Guindy,
Chennai – 600 032.

...Respondent

Prayer: . Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 22.01.2025 passed by the XV Additional City Civil Court, Chennai in IA.No.1 of 2024 in OS.No.5291 of 2019.



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For Petitioner : Mr. A.K.Rajaraman
For Respondent : Mr. C.G.Kumar
For Caveator.

ORDER

Challenging the order allowing an application for receiving an additional documents the defendant is before this Court. The facts are herein below set out.

2. The plaintiff had filed a suit originally on the file of this Court in CS.No.494 of 2016 for the following reliefs:

(i) Injunction to restrain the defendant from offering services and products directly or indirectly competing with any of the plaintiff's services and products till 18 months as committed in his second non compete agreement;

(ii) Injunction to restrain the defendant from taking up employment with any of the plaintiff's direct



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competitors directly or indirectly till 18 months as committed in his second non compete agreement

(iii)Direct the defendant to pay to the plaintiff damages for the breach of contracts dated 27th december 1995, 22nd June 2015 and undertaking dated 18th January 2016 of Rs.40,00,000/- (Rupees Forty Lakhs Only).

(iv)Direct the defendant to pay the costs of the suit.

3. The basis on which the suit had been instituted is that the defendant had been appointed as a service engineer in their office at Chennai. At the time of his appointment, the defendant had signed a non compete undertaking cum declaration agreement on 22.06.2015 and another undertaking on 18.01.2016, where it was made clear that for a period of 18 months from the date of the agreement, namely, 22.06.2015 the petitioner will not compete with the company and its subsidiaries and affiliates, etc., to procure orders from or do businesses with any customer of the company.



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4. Further, after termination for a period of 18 months the defendant had undertaken not to directly solicit, encourage or induce any other employees of the company to terminate employment with the company and that he would not disclose any confidential information of the company.

5. On 30.06.2006, the agreement was revised in which Clause 3 and 8 were added which reads as follows:

“Clause 3 You are required not to divulge, communicate or pass on any information to any form related to any aspect of the company.

Clause 8 You are required not to engage yourself in any other gainful or commercial employment, business, part – time or full time directly or indirectly simultaneously as long as you are employed with ABS Instruments Pvt. Ltd., or engage yourself directly or indirectly in any other activities of the company in any



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way.”

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6. The plaintiff would submit that on 29.04.2015, the defendant had submitted his resignation letter notifying his resignation from the position of Manager Technical.

7. The plaintiff's case is that after leaving the services of the plaintiff the defendant has been collecting orders from the plaintiff's clients. He had also started his business in the name and style of RV Testing Machines. It had come to the notice of the plaintiff that the defendant has been contacting the plaintiff's customers, suppliers and employees under this name and had collected orders from big clients of the plaintiff. Since there was a breach of the terms of the contract of employment as well as non compete undertaking cum declaration agreement dated 22.06.2015, the plaintiff was constrained to issue a legal notice dated 31.08.2015 to the defendant to cease the above activities.



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8. A reply was issued on 05.10.2015 by the defendant in which he does not deny the statement made by the plaintiff. Therefore, the plaintiff had come forward with the suit in question.

9. The suit was filed on 13.04.2016 before this Court and thereafter transferred to the file of the City Civil Court and numbered as OS.No.5291 of 2019 on the file of the XV Additional City Civil Court, Chennai.

10. The defendant had filed a written statement on 30.03.2021 refuting the aforesaid contention. The issues are framed, thereafter, the application for receiving an additional documents has been filed on 12.07.2024 nearly 3 years after the suit had ripened for trial.

11. In the affidavit filed in support of the said application the plaintiff would submit that they had come across certain documents which were not available at the time of filing of the suit, which would



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prove that the defendant had started communicating with the other customers of the plaintiffs vide e – mails dated 14.04.2015, 17.04.2015 and 13.04.2015. Therefore, they had come forward with the application to receive additional documents. The petitioner would also rely upon the on line application dated 22.03.2024 under the RTI Act.

12. A counter has been filed by the defendant contending that the documents give raise to a new cause of action and that there are no pleadings which support these documents.

13. The learned XV Additional Judge, City Civil Court, Chennai, however proceeded to allow the application.

14. Challenging the same, the defendant / petitioner is before this Court.

15. The learned counsel for the petitioner would contend that there is nothing in the affidavit filed in support of the said petition to



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state as to why these document have not been filed at the time of filing of the suit and the only averment made was that it was misplaced which is not a ground to allow the application that has been filed as late as at the time of Trial.

16. The learned counsel would rely upon the Judgement of the Hon'ble Supreme Court reported in **2021 (13) SCC 71 - Sudhir Kumar Vs. Vinay Kumar GB**, wherein he would rely upon paragraph No.8.5. He would also rely upon the unreported Judgement of the Delhi High Court in **CS(OS).No. 504 of 2004 – Polyflor Limited Vs. Sh. A.N.Goenka and others**, wherein he would place reliance on the portions of the judgement of **Salem Advocate Bar Association Vs. Union of India** reported in **2003 1 SCC 49**.

17. The respondent had entered caveat in the above matter.

18. Heard the learned counsels and perused the records.



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19. The plaintiff has filed a suit seeking relief against the defendant on the ground that there has been a breach of the undertaking given. Specific pleadings in the plaint as to the breach by the defendant has been set out in paragraph Nos.15, 16 and 17. In the list of documents the plaintiff has also enclosed e-mail exchanged between the defendant and the plaintiff's client.

20. The plaintiff has clearly stated that these documents could not be filed as it had been misplaced. No new case is made out by the plaintiff. That apart, the Trial is yet to be commence in the matter. The defendant has entered into correspondence with the plaintiff's customers in total disregard to the agreement.

21. The Judgement relied upon by the petitioner in the case of ***Sudhir Kumar Vs. Vinay Kumar***, was a case where the petitioner despite having possession of the invoices had failed to file the same stating that it was voluminous. The Hon'ble Supreme Court has held

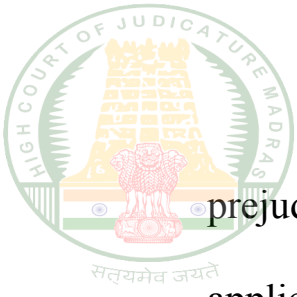


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that the non filing of the document on the aforesaid ground was not a reasonable cause for not filing the same at the time of the filing of the plaint. However, in the instant case, the plaintiff had clearly stated that the e-mail correspondence was misplaced by them. However, it is seen that not only is there pleadings to the effect that there is such documents and that apart the plaintiff has also filed a similar correspondence as Doc.No.6.

22. The reliance upon the *Salem Advocate Bar Association* for the proposition that the petition is belated and that the petitioner who seeks to produce the document should satisfy the Court that the documents were earlier not within the knowledge of the party and could not be produced despite due diligence may not apply as in the instant case, the plaintiff has pleaded that the document have been misplaced, therefore, it could not be filed.

23. Further, since there is a pleading and similar documents already filed to which the petitioner has submitted his counter no



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prejudice is going to be caused to the petitioner on account of the application being ordered.

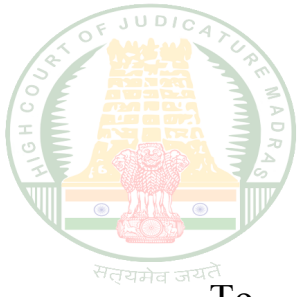
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24. I see no reason to set aside the order passed by the XV Additional City Civil Judge, Chennai. The civil revision petition is dismissed. The miscellaneous petition is closed. No costs.

03.03.2025

Index : Yes/No
Internet : Yes/No

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To
The XV Additional City Civil Judge,
Chennai.



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P.T. ASHA, J,

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