



A.No. 3521 of 2025
in
C.S.No. 212 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08-09-2025
CORAM
THE HONOURABLE MR.JUSTICE P. DHANABAL

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in
C.S.No. 212 of 2021

Tamilnadu Mercantile Bank Limited
Represented by its Executive Vice President
Mr.K.Vijayan
No.57, V.E.Road, Thoothukudi.

Applicant

Versus

1.T.Rajakumar
No.2/182, Raja Garden 1st Street,
Kottivakkam, Chennai 600 041.

2.Sathyam TV,
Represented by its Chief Editor
Sathyam Television Private Limited
No.1, Kamaraj Park Street
Royapuram
Chennai-600 013.

...Respondents

Prayer: Application has been filed to eschew the evidence of PW1, namely, P.Suriaraj and a fresh trial is order to establish the case of the Plaintiff's Bank.



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WEB COPY For Applicant : Mr.Harshit S. Jain

For R1 ; Mr.A.Satheesh

For R2 : Mr.P.T.Perumal
No Appearance

ORDER

This application has been filed by the applicant/plaintiff seeking to eschew the evidence of PW1 viz., P.Suriaraj.

2. According to the applicant, he is the Executive Vice President of the plaintiff Bank, who has been duly authorized by a Board Resolution dated 12.06.2025, to represent the applicant/plaintiff Bank and the main suit has been filed for recovery of money as against the respondents/defendants herein and for permanent injunction from conducting press meets or telecasting/airing news items and or publishing in any form of media, touching upon the matters which are subjudice on the file of this Court. Initially, the plaint was filed by the then General Manager, namely, Mr.P.Suriaraj and he has also filed his Proof Affidavit and had partly deposed evidence on behalf of the Plaintiff Bank as PW1. During the pendency of the suit, he retired from service on attaining the



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age of superannuation and as such, he was unable to continue to appear before the Court. Therefore, the evidence of PW1 has to be eschewed and a fresh trial has to be commenced for establishing the case of the plaintiff by examining other witnesses.

3. According to the respondents, the 1st respondent is a stakeholder in the applicant/plaintiff Bank and the 2nd respondent is a Chief Editor, Sathyam Television Private Limited and the 1st respondent is an expert in the field of banking and erstwhile director of the applicant Bank from 2009 to 2016. The applicant/plaintiff Bank has filed the suit for defamation against the respondents 1 & 2 claiming a sum of Rs.10,00,00,000/- towards damages. The respondents/defendants have also filed written statement and thereafter, the suit is posted for examination of PW1 and he was cross-examined partly by the respondent side. Therefore, the evidence of PW1 cannot be eschewed. If the evidence of PW1 is eschewed, it will cause prejudice to the respondents. Therefore, the application is liable to be dismissed.

4. Heard both sides and perused the records.



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5. The main suit in O.S.No. 212 of 2021 was filed by the applicant/plaintiff bank as against the respondents/defendants for damages claiming a sum of Rs.10,00,00,000/-. After filing written statement by the defendants, now the case is pending for trial. Already, PW1, namely, Mr.P.Suriaraj, was examined as a witness and marked the documents. He was partly cross examined by the respondents/defendants. At this stage, this application was filed to eschew the evidence of PW1 on the ground that PW1 was retired from service and thereby he was unable to attend the Court. Therefore, they have to examine other witnesses by eschewing the evidence of PW1.

6. It is a well settled law that once the witness has been examined on oath in Court, there is no provision to eschew the evidence and instead of eschewing the evidence, the Court may consider the evidence at the appropriate stage of the case.



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WEB COPY 7. This Court has also held in the case of **D.F.Philips v.**

Damayanthi Kailasam and Others reported in **2009 MLJ 6 Page 677**, that there is no provision for eschewing the evidence that has been recorded on oath in Court; instead of eschewing the evidence, the Court may consider at the time of final hearing case. The same principle also reiterated by the Hon'ble Division Bench of this Court in the case of **S.Nirmala v. Shanthi Harikrishnan**, in OSA.No.187 of 2024 and CMP.No.20346 of 22377 of 2024, dated 17.10.2024. Therefore, the evidence recorded in this case as PW1 cannot be eschewed. At the same time, the evidence of witness PW1 can be kept in the case records. The Court at the time of adjudication shall assess the probative value of the evidence of PW1. Therefore, the applicant/plaintiff can adduce further evidences in accordance with law.

8. With the aforesaid observations, this Application is disposed of. No costs.

MSM

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P.DHANABAL, J.,

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