



WEB COPY



A.No.2109 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-06-2026

CORAM

THE HON'BLE DR.JUSTICE A.D.MARIA CLETE

A No. 2109 of 2026

in

C.S. No. 203 of 2022

1. Mrs.Aruna,
W/o late N.Shyamsunder,
2. Ms.Sruthi
D/o.late N.Shyamsunder
3. Mr.Roshan Anantharamakrishnan
S/o late N.Shyamsunder, applicants 1 to 3
residing at No.2, Lady Madhavan Road,
Mahalingapuram, Nungambakkam, Chennai -
600 034

..Applicant(s)

Vs

1. Mrs.V.Sucharita, and 3 others
W/o.Dr.C.Venkataraman, Old No.9, New No.12,
Kasthuri Bai Nagar, 2nd Cross Street, Adyar,
Chennai - 600 020.
2. Mrs.S.Radhika
W/o. Satyanarayanan, Door
No.17-1-383/IP/168/1, Indraprastha Township,
Phase I, Saidabad, Hyderabad, Telengana 500
059.
3. Mrs.N.Krishna Prabha
W/o. M.Anand, Flat FB, Block 6 - Jain's Pebble
Brook, MadhaKoil Street, OPP. Thalapakatti,
Okkiam Thoraipakkam, Chennai - 600 097.



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Mrs.N.Susheela Bai, (Deceased)
W/o.Late R.Nandagopal Naidu,
30, Thiru Vi Ka Road,
Royapettah, Chennai – 14.

4. Mr.H.H.Jayshree
W/o K.H.HariBabu, 1931-B, I Block, 38th Street,
Anna Nagar West, Chennai - 600 040.

..Respondent(s)

PRAYER: Application filed under Order XIV Rule 8 read with Section 151 of CPC
praying to eschew the proof affidavit of PW-2 from the record.

For Applicant(s): M/s.Madhupreetha Elango
R.Supraja

For Respondent(s): Mr.M.Jaurudeen.

ORDER

This application has been filed to eschew the proof affidavit of PW-2 from
the record in C.S. No. 203 of 2022.

2.It is contended by the learned counsel for the applicant that despite
repeated directions of this Court and multiple opportunities spread over a
substantial period of time, the PW2 failed to enter the witness box and subject
herself to examination and cross-examination. It is further contended that more
than two years after time lines were fixed, PW2 refused to present and thus, the

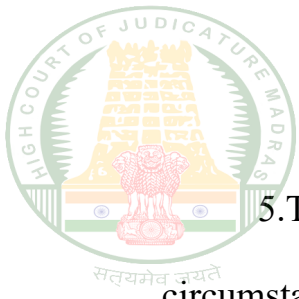


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plaintiffs are grossly delaying and protracting the proceedings and thus, the persistent failure of PW2 to appear across several consecutive hearings, even after final opportunities and express directions of this Court, leaves no justification and thus sought to eschew the proof affidavit of PW2 from the record.

3.The question that arises for consideration is whether the proof affidavit of PW2 already on record can be eschewed merely because of the continuous absence of the said witness.

4.This issue is no longer res integra in view of the Judgment of the Division Bench of this Court in O.S.A. No. 187 of 2024 dated 17.10.2024 wherein this Court has held that there is no provision in the Evidence Act / Bharatiya Sakshya Adhiniyam or the Code of Civil Procedure to eschew the evidence already on record; at best, the court may consider its admissibility, evidentiary worth or probative value at the appropriate stage. The Division Bench further held that objections of this nature must be raised before evidence is recorded and that previously recorded evidence cannot thereafter be eschewed.



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5. Thus, the subsequent absence of the witness to continue may be a circumstance relevant for any other procedural relief, if available in law, but it is not a ground to eschew what has already been recorded. In such view of the matter, this Court is of the opinion that the relief sought in the present application cannot be granted.

6. Accordingly, this application is dismissed. No costs.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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DR.A.D.MARIA CLETE, J.

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