



WEB COPY

OSA No. 54 of 2026



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-04-2026

CORAM

**THE HONOURABLE MR JUSTICE P. VELMURUGAN
AND
THE HONOURABLE MRS.JUSTICE K. GOVINDARAJAN
THILAKAVADI**

**OSA No. 54 of 2026
AND
CMP No. 6361 of 2026**

Mohan Breweris and Distilleries Limited
Rep.by its Senior Deputy General
Manager-Accounts G.Samuthiram
No.7, Selva Street
Madurai Meenakshi Nagar
Valasaravakkam, Chennai-600 087

Appellant

Vs

M/s Empee Distilleries Ltd.,
Rep. by its Managing Director
Having registered office at
No.72, Greams Road, Thousand Lights
Chennai-600 006

Respondent

Memorandum of Grounds of Original Side Appeal under Order XXXVI Rule 9 of the Original Side Rules, against the order dated 22.01.2026 passed by the learned Judge in C.S.No.28 of 2017.

For Appellant: Mr.G.Krishna Kumar

For Respondent: No appearance

JUDGMENT

(Judgment of the Court was made by P.Velmurugan J.)

The appellant, who is the plaintiff in C.S.No.28 of 2017, has filed this



appeal aggrieved by the order dated 22.01.2026 passed by the learned single Judge scrapping the evidence of PW2 on the ground that he did not present himself for cross examination.

2. The learned counsel appearing on behalf of the appellant/plaintiff would submit that though the suit was filed in the year 2017 praying for a judgment and decree to direct the respondent/defendant to pay a sum of Rs.4,38,34,396.10 to the appellant/plaintiff, the matter is getting prolonged on account of the interlocutory applications being heard and disposed of. The learned counsel would further submit that though the respondent filed an application to reject the plaint, the same ultimately came to be rejected. After much struggle, the matter came up before the learned Master for recording of evidence, where PW1 was examined. Thereafter, PW2 entered into the box on several occasions before the learned Master and one way or the other, it was adjourned like when the plaintiff's counsel was present along with the witness, the respondent's counsel did not come for cross examination. Therefore, the matter came to the Court. However, the learned single Judge has misunderstood as if PW2 was not present and the appellant was not ready and therefore, the impugned order was passed.

3. Though the respondent has been served and his name is printed in the cause list, there is no appearance either in person or through counsel.



4. On perusal of the records including the docket orders, it is seen that though the plaintiff's witness was present on several occasions, only the counsel for the other side did not choose to cross examine. Once the witness remained present, it is the duty of the counsel to subject the said witness to cross examination and only due to extraordinary circumstances or some personal inconvenience, adjournment can be sought for. Whereas a reading of the docket orders would show that on several occasions, the plaintiff's witness was present, but the respondent's counsel was adamant not to cross examine the said witness, which attitude shows that one way or the other, the respondent wanted to protract the proceedings. However, the learned single Judge failed to consider the issue i.e., the appearance of the witness on the side of the plaintiff on several occasions. On this score, the impugned order is set aside and the matter is remitted back to the learned single Judge, who shall issue a direction to the parties as well as their counsel to expedite the proceedings before the learned Master. With this observation, this original side appeal stands allowed. Consequently, the connected CMP is closed. No order as to costs.



OSA No. 54 of 2026



(P.VELMURUGAN J.) (K.GOVINDARAJAN THILAKAVADI J.)
27-04-2026

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

SS

P.VELMURUGAN J.
AND
K.GOVINDARAJAN
THILAKAVADI J.

SS

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