

20/07/2018

For orders,

ORDERS ON I.A. NO.XI UNDER ORDER VIII
RULE 1A OF CPC

The defendant counsel filed the above application praying to condone the delay in production of the documents as mentioned in the I.A. in the interest of justice.

2. In the annexed affidavit, it is stated that the documents sought to be produced are very important and relevant documents in support of his defence taken and evidence affidavit filed by him. When he was about to mark the CD, this Court observed that the said CD was not certified by any authenticated authority. Therefore, he sought time to lead his further evidence and after getting the authentication of the said CD from the concerned as required under Sec.65B of the Indian Evidence Act, he filed this application. The other documents are happened to be in relation to subsequent events and are obtained recently and are produced without further delay as the matter now stands posted for his further evidence. The said conversion was happened few days before. The delay in production of documents mentioned in the application is due to the reasons stated above, which is bonafide and unintentional. He has got good case on merits and may be

permitted to produce the documents mentioned in the application. Hence, prayed to allow the application.

3. The plaintiff counsel filed objections to the above application stating that application is not maintainable in the eye of law. The defendant has sought for a mandate before this Court to permit him to produce the original CD wherein it is alleged that it contains a conversation between the plaintiff's father and defendant, the defendant and one Sri.Srinivas. The said persons are not parties to the suit and they are not even examined as witnesses in the above case and such the said documents are not necessary to prove or adjudicate upon the issues framed by this Court. As per the averments made in the application and affidavit accompanying the application, it appears that the defendant has tried to record/tap the phone conversations and as such the said act of recording/tapping of the phone conversations is illegal and infringing the right of privacy and as such the document itself is void, illegal and cannot be produced and relied upon by the defendant in the present case. The defendant has not provided the copies of the so called illegal documents to the plaintiff, which are now sought to be produced and the defendant has also failed to explain any reasons for production of the same and

has also not stated the original and date of its original, as such the application under reply is liable to be dismissed. The production of the CD is not in compliance with the Information Technology Act. As per the judgment passed by the Hon'ble Supreme Court of India and Hon'ble High Court reported in (1997) 1 S.C.C 301 in the case of People's Union of Civil Liberties V/s Union of India and another, judgment dated 26/05/2015 passed by the Hon'ble High Court of Rajasthan in Vishal Kaushik V/s Family Court and another and AIR 2008 Andhra Pradesh 98 in the case of Smt.Rayala M. Bhyvaneswari V/s Nagaphanender Rayala, the said documents cannot be considered. Hence, prays to dismiss the application.

4. Having heard the learned counsel, the following points arise for my consideration:

1. Whether the application under Order VIII Rule 10A of Code of Civil Procedure filed by the defendant deserves to be allowed ?

2. What Order?

5. My answer to the above points are as under ;

Point No.1: In the Negative

Point No.2: As per final order
for the following:

REASONS

6. **Point No.1:** The plaintiff has filed the suit under Specific Relief Act against the defendants. When the case was posted for further evidence of DW-1, at that time the defendant counsel filed the above application praying to permit him to produce the documents. The said documents are the extract of CD content containing the conversation between the plaintiff's father and the defendant, the defendant and one Sri.Srinivas and Nagaraj and the defendant and the certificate issued by the Clause 4 of Evidence Forensic Lab as required under Sec.65B of Indian Evidence Act in relation to audio authentication. The defendant counsel relied on the decision reported in (1997) 1 S.C.C 301 in the case of People's Union of Civil Liberties V/s Union of India and another and AIR 2008 Andhra Pradesh 98 in the case of Smt.Rayala M. Bhyvaneswari V/s Nagaphanender Rayala. The above decisions are supporting the case of the defendant. In this case also it is held that without the knowledge of the parties, which was referred above in the documents, it would be illegal and amount to infringement of the parties right to privacy. In the above decision, it is clearly mentioned that said tapping even if true cannot be admissible in evidence. Further, in this case, the parties who were conversing in the phone

till today have not to undergo voice list and said parties voices not yet compared portions with their admitted voices. Further, the said CD is not in compliance with the Information Technology Act. The defendant has not produced the said CD obtained from authenticated companies i.e., BSNL, Airtel etc. According to defendant, the said recording/tapping the phone conversation between the plaintiff's father and the defendants, the defendant and Srinivas and Nagaraj, who were witnesses to the agreement of sale in dispute. It is pertinent to note that plaintiff's father is not a party in this case and also witnesses are not party in this case. The plaintiff counsel taken specific contention that act of recording/tapping of the phone conversation by the defendant is illegal and infringement to the right of privacy and as such the document, which is void, illegal and cannot be taken on record. Hence, plaintiff has made out reasonable grounds to disallow the application. Accordingly, I answer point No.1 in the Negative.

7. **Point No.2** : In the result for the foregoing reasons, I pass the following :

ORDER

I.A. No.XI under Order VIII Rule 1A of Code of Civil Procedure filed by the defendant is herewith rejected.

No order as to costs.

**For further evidence of DW-1 by
27/07/2018.**

(Dictated to the Judgment Writer, transcribed by her, corrected and then pronounced by me in open court this the 20th day of July, 2018.).

**(NAGAVENI)
V ADDL.CITY CIVIL JUDGE
BANGALORE**