

**IN THE COURT OF LXXXII ADDL.CITY CIVIL & SESSIONS  
JUDGE,AT BENGALURU (CCH.83)**

**THIS THE 12<sup>th</sup> day of November 2020**

**PRESENT:  
SRI.DEVARAJA BHAT.M.,B.COM,LL.B.,  
LXXXII ADDL.CITY CIVIL & SESSIONS JUDGE,  
BENGALURU.**

**IA.NO.XV TO XVII**

**BETWEEN:**

**Silicon Builders Pvt. Ltd.,**

**: APPLICANT/PLAINTIFF**

**AND**

**Bindu Promoters and Developers  
& others**

**: OPPONENTS/DEFENDANTS**

**IN**

**Com.O.S.No. 9207/2013**

**BETWEEN:**

**Silicon Builders Pvt. Ltd.,**

**: PLAINTIFF**

**AND**

**Bindu Promoters and  
Developers & others**

**: DEFENDANTS**

**ORDERS ON I.A. NO.XV TO XVII**

I.A.No.XV is filed under Order XVIII Rule 17 read with Section 151 of Civil Procedure Code to re-call P.W.1 and permit him to adduce further evidence. The I.A.No.XVI is filed under Section 151 of Civil Procedure Code to re-open the matter for recording further evidence of Plaintiff. I.A.No.XVII is filed under Order XI Rule 1 (5) read with Section 151 of Civil Procedure Code to condone the delay in producing certain documents.

**2.** In the accompanying Affidavits, the Director of the Applicant/Plaintiff company has contended as follows :-

That at the time when the Advocate for the Plaintiff was preparing for cross-examination of D.W.1, the Plaintiff noticed that there were two recovery proceedings one by Bank of Baroda filed before Civil Judge, Tumkur and later transferred to DRT as O.A.No.1322/1995, that another proceeding filed by Vijaya Bank and State Bank of Mysore which was numbered as O.A.No.257/1995, that the recovery certificates have been issued in 2000 and 1999, that the same were suppressed by the Defendant while selling the Schedule property to the Plaintiff as per Ex.P.9/Sale Deed, that in order to mark the said documents the P.W.1 is to be re-called and hence he prays to allow the said Applications.

**3.** The Opponents/Defendants have filed its detailed common objections on 17.03.2020 and prayed to dismiss the said Applications.

**4.** I have heard the arguments of the learned Advocate for the Plaintiff on the said I.As. The contentions raised in the objections of the Defendants itself is treated as the arguments of the Defendant, since the Advocate for the Defendant was absent, in order to delay in disposal of this old suit.

**5.** Based on the contentions of the respective parties, submissions made by the learned Advocate for the Plaintiff, I formulate the following Points for my consideration:-

- (1) Whether there are grounds to receive the documents on the record?
- (2) Whether the matter is to be re-opened and P.W.1 is to be re-called?
- (3) What Order?

**6.** Our findings are as follows:-

Point No. 1 : - In the Negative.

Point No. 2 :- In the Negative.

Point No. 3: - As per my final orders for

the following reasons.

### **REASONS**

**7. Point No. 1:** - This suit is filed on 16.12.2013. This Application is filed when the suit is posted for hearing the final arguments. The Plaintiff intends to file some documents relating to attachment and sale proclamation of the disputed property and also an order passed on 16.12.2010. It is to be noted here that at Para No.18 of the Plaint, the Plaintiff has contended that the cause of action for the suit arose on 13.01.2020, when proclamation notice was affixed on the Schedule Property by the Recovery Officer - D.R.T. and on 16.12.2010 when the D.R.T. dismissed the Application filed by the Plaintiff. Therefore, the Plaintiff was aware of the said proceedings and documents while filing the suit itself. However, he has not filed the said documents along with the Plaint or thereafter till the suit reached the stage of final arguments. The other two documents sought to be filed are the Application for impleading the Plaintiff in a proceedings dated 21.01.2014 and objections filed by the Bank to the said Application and Order rejecting the said Application of the Plaintiff on 30.07.2014. All these proceedings held during pendency of the suit. The Plaintiff commenced the evidence only on 14.11.2018.

All the said documents were in existence long prior to the commencement of the evidence by the Plaintiff. However, at this fag end of the case, Plaintiff intends to file the said documents.

**8.** As per Order XI Rule 1 (5) of the Civil Procedure Code as amended under Section 16 of the Commercial Courts Act, the Plaintiff shall not be allowed to rely on documents, which were in the Plaintiff's power, possession, control or custody and not disclosed along with Plaint or within the extended period set out above, save and except by leave of court and such leave shall be granted only upon the Plaintiff establishing reasonable cause for non-disclosure along with the Plaint.

**9.** In the present case, when the Plaintiff based his suit on the said attachment and sale proclamation issued by the D.R.T., and the Plaintiff himself has shown the cause of action for the suit itself about the said aspect, it cannot be said that he was not aware of the said documents or he has some valid reasons for not producing the said documents along with the Plaint. Further, his only contention is that he came to know about the said documents when his advocate was preparing for cross-examining the Defendant's witness. The said reason put forth by the Plaintiff cannot be accepted at all. Further, during the

course of cross-examination of PW.1, the learned Advocate for the Defendant has elicited all these aspects and hence, he was aware about all these proceedings and documents before entering the witness box. More particularly, during his cross-examination, the PW.1 has deposed as follows:-

***“I have seen proclamation notice dated 13.01.2010 referred to in Para No.6 of the Plaint. Attachment Order was made on 13.01.2010 in said O.A.No.257/1995 and Proclamation notice was affixed to the Schedule Property on 15.01.2010. There is no prohibitory order served on any of the parties including the Plaintiff. I have verified and got full knowledge of the proceedings of O.A.No.257/1995 and obtained Certified copies of the said proceedings.”***

**10.** In view of the said evidence, there is no necessity to produce the said documents and get marked at this stage. Therefore, there are no grounds to grant leave to the Plaintiff to produce the said documents since the Plaintiff has not established reasonable cause for non-disclosure of the said documents along with the Plaint. Though some documents are pertaining to the period after filing of the Plaint, as per Order XI Rule 1(12) of the Civil Procedure Code, as amended under Section 16 of the Commercial Courts Act, the duty to disclose documents which have come to the notice of a party continue till disposal of the suit. When such being the case, since the

said documents are relating to the period prior to the commencement of evidence of the Plaintiff, when he has not disclosed at the time of his evidence, he cannot be allowed to produce at this fag end of the case. Therefore, leave cannot be granted to him to produce the said documents. Therefore, I answer this Point in the '**Negative**'.

**11. Point No.2:-** For the same reasons, there are no grounds to re-open the case or to re-call PW.1 for adducing further evidence as prayed in I.A.No.XV and XVI. Therefore, I answer this Point in the '**Negative**'.

**12. Point No. 3:-** Therefore, I proceed to pass the following Order.

### **ORDER**

***The I.A.No.XV filed under Order XVIII Rule 17 read with Section 151 of Civil Procedure Code is dismissed.***

***The I.A.No.XVI filed under Section 151 of Civil Procedure Code is dismissed.***

***The I.A.No.XVII filed under Order XI Rule 1(5) read with Section 151 of Civil Procedure Code is dismissed.***

***The Applicant/Plaintiff is hereby ordered to pay cost of Rs.1,000/- to the Defendant as per Section 35 of Civil Procedure Code as amended***

***under Section 16 of the Commercial Courts Act.***

***Since this is an old case, more than 7 years old, both advocates are directed to submit their oral arguments or written arguments on the next occasion itself without fail, i.e., on 19.11.2020.***

(Dictated to the Judgment Writer, typed by her directly on the computer, transcribed by her, verified by me and pronounced in the open court on **12<sup>th</sup> day of November 2020**).

**(M. DEVARAJA BHAT)  
LXXXII Addl. City Civil & Sessions Judge,  
Bengaluru.**

The Orders on I.A.No.XV to XVII is pronounced in Open Court. The operative portion of the said Orders is as follows :-

**ORDER**

***The I.A.No.XV filed under Order XVIII Rule 17 read with Section 151 of Civil Procedure Code is dismissed.***

***The I.A.No.XVI filed under Section 151 of Civil Procedure Code is dismissed.***

***The I.A.No.XVII filed under Order XI Rule 1(5) read with Section 151 of Civil Procedure Code is dismissed.***

***The Applicant/Plaintiff is hereby ordered to pay cost of Rs.1,000/- to the Defendant as per Section 35 of Civil Procedure Code as amended under Section 16 of the Commercial Courts Act.***

***Since this is an old case, more than 7 years old, both***

***advocates are directed to submit their oral arguments or written arguments on the next occasion itself without fail, i.e., on 19.11.2020.***

(vide my separate detailed Order dated 12.11.2020).

(Typed to my dictation)

**LXXXII ACC & SJ,B'luru.**