

Orders on memo regarding marking of document

This memo is filed by the learned counsel for the DHR submitting that the certified copies of the order sheet in CMP 2221/1999 which is in Malayalam language and the English translated copy of the said order sheet which is also the certified copy is produced along with I.A. dated 15.10.2022 which is taken in the record. However the same is not yet marked in the examination-in-chief of DHR alleging that it is not clearly legible. It is contended by the DHR that even though it is legible due to the fact that the original is in thin sheet, the copies have smudged/overlapped of the back pages of manuscript. But having regard to the fact that this document requires to be appreciated by the court regarding falsity of the objector's case it is required to be marked. Hence prays to order for marking of the said document.

2. Per contra, the objector has filed objections to this memo stating that the DHR himself has admitted that the document due to over overlapping of the text which renders the document wholly illegible. Earlier also, the copy of the said document was produced before the court, but it was not marked as it was not a original document. Subsequently, with an application this document was produced which was wholly illegible. Therefore this court had afforded opportunity to the DHR to produce the legible copy. Although multiple opportunities were provided to the decree holder, still they have failed to produce the legible copy. In addition to that,

the DHR has also failed to show the relevancy of the document to the instant execution petition to allow the said document to be marked as an exhibit. Hence prays to dismiss the memo.

3. Heard. Perused the records.
4. The points that would arise for my consideration are:
 1. Whether the DHR be permitted to get the document marked as prayed?
 2. What Order?
5. My findings are as under:
 - Point No.1: In the Negative
 - Point No.2: As per the final order for the following:

REASONS

6. **Point No.1:** Both the learned counsels for DHR and objector have reiterated their specific contentions as raised in the memo and objections thereto and they have canvassed their arguments. I have gone through the records of the case. Upon enquiry, the DHR is examined as RW.1 upon enquiry on objector's application filed under Order 21 Rule 97 of C.P.C. At that point of time, on 17.10.2022, the DHR had filed I.A.No.15 praying to permit him to produce certain documents. On that day, the learned counsel for objector submitted that keeping open his objections, so far as marking

of the documents at the time of evidence, I.A.No.15 may be allowed. Accordingly the said I.A. came to be allowed and the additional documents were taken into record. On the next date of hearing, the learned counsel for the DHR wanted to mark this disputed document before the court. At that point of time, the learned counsel for the objector seriously objected marking of this document stating that the original certified copy of the purported B charge sheet is not legible and is in Malayalam language and the translated copy of this certified copy cannot be compared with the certified copy produced by DHR in view of the fact that the original B charge sheet itself is not legible. However, the learned counsel for the DHR submits that he cannot procure the original document as it is in Kerala state and also he does not know whether the said document is available or not.

7. I have gone through the document which is intended to be produced before the court. As rightly contended by the learned counsel for the objector this document is in Malayalam language and certainly the alphabets are overlapping due to which even though the translated copy is given, it may not be possible to properly analyse this translated copy with the document which is in Malayalam language not even by an expert translator. Apart from this, when I go through the document, it is the document pertaining to CMP 2221/1999. So far as this document is concerned, I have gone through the evidence of the DHR i.e.,

RW.1. On going through the entire evidence in chief, at para 9 of the evidence, the DHR claims that a false proceedings is initiated in CMP 2221/1999 on baseless allegations which culminated in B report and remained unchallenged. On going through the cross-examination of the objector, it is found on 12.09.2022 when OW.1 was cross-examined, he has specifically stated that he is not a party in O.S.No.804/1998 and 2221/1999. So far as CMP 2221/1999 of which B charge sheet is intended to be produced before the court, he has specifically stated that he has verified regarding same before the Metropolitan Magistrate, Thiruvananthpuram after obtaining the sale deed and the case was filed by Tennysons family against 4 persons. When he was suggested that B report is filed in that case absolving all the persons against whom the said CMP was filed, he pleads his ignorance. On going through this suggestion put to OW.1 during the course of cross-examination, now one thing is clear, this CMP 2221/1999 is not connected to the objector herein. It was filed by the alleged vendors of the objector against some other third parties which culminated in filing B charge sheet. Of course except stating that he has verified the said petition, nothing is stated by the objector that he has got anything to do with this case. Such being the case, when that particular document is produced by the DHR stating that it is a relevant document to show the falsity of the objector, then it is incumbent upon him to produce such document which is legible and the objector can appreciate the same and put

forth his say. Without doing so, when this document does not pertain to the objector, it is not proper to keep the objector in surprise. Even though the said document is a certified copy and even though the translated copy is a certified copy, the document is not legible and where the court cannot stretch its hands to appreciate the same, cannot be marked. It cannot be said that the DHR cannot obtain proper certified copy of that document if at all if that document is very much necessary to prove his case. Considering these facts, I do not find any reasons to appreciate the contention of the DHR. Accordingly, I hold point No.1 in the ***Negative***.

8. **Point No.2:** In view of the above discussions, I proceed to pass the following:

ORDER

The memo filed by the DHR is rejected.

Marking of illegible document is declined.

For further chief of RW.1 by:

(Dictated to the stenographer, transcribed and typed by her, corrected and then initiated by me and pronounced in the open Court on the 21st day of November, 2022.)

(Varadaraj. B)
Prl. Senior Civil Judge,
Bengaluru Rural District, Bengaluru.