

In the Court of the I Additional District Judge, Madurai

Present: Tmt.N.Nagalakshmi, M.A., B.L.,

I Additional District Judge, Madurai.

Thursday, the 1st day of December, 2022.

I.A.No.377/2022 and 396/2022 in

O.S.No.221/2017

HDFC Bank Ltd.,

Represented by its Manager

... Petitioner/3rd defendant

/vs/

ARASPPV Cars Private Ltd.,

Represented by one of its Directors,

P.Vasu

... Respondent/Plaintiff

These three petitions came up before me for final hearing on 24.11.2022 in the presence of Thiru.A.Anbalakan, Counsel for the petitioner and of Thiru. S.Rethinakumar, Counsel for the respondent upon hearing the arguments of both side and upon perusing the case records and having stood over till this day for consideration, this court passed the following

COMMON ORDER

I.A.No.377/2022:-

Petition filed by the petitioner/3rd defendant under Order VIII Rule 1A(3) and section 151 of CPC seeking permission to produce and mark the documents on the side of the 3rd defendant.

I.A.No. 396/2022:-

Petition filed by the petitioner/3rd defendant under Order 18 Rule 17 and section 151 of CPC to recall the D.W.1 for additional proof affidavit and marking of documents.

2. Common averments of the affidavits filed by the petitioner in brief are as follows:-

- (1) The main suit has been filed by the Respondent/Plaintiff against the

defendants seeking the relief of recovery of money. The written statement had been filed on petitioner side the documents sought to be marked had not been filed along with same. The documents were mixed up with other documents. Hence these documents were unable to be filed along with the written statement Apart from the same. Hence it is necessary to permit the petitioner to produce and mark the documents. Hence the petition 377/2022 is filed.

This case was posted on 07.03.2022 for the petitioner side proof affidavit along with 5 documents filed. Though the proof affidavit had been filed on petitioner side the additional 3 documents sought to be marked had not been filed along with same. The documents were mixed up with other documents. Hence these additional 3 documents were unable to be filed along with the proof affidavit apart from the same. Hence it is necessary to permit me to produce and mart the additional proof affidavit along with 3 documents. The above said documents are to be marked through DW1. Hence the petitioner/3rd defendant has to be recalled, for which petition in I.A.No. 396/2022 is filed.

If the petitions are not allowed, the petitioner will be put to irreparable loss. Hence it is prayed to allow the petitions as prayed for.

3. Brief averments of the counter affidavit filed by respondent are as follows:-

The petitions are not maintainable in law and on facts. The documents produced on the side of the petitioner are irrelevant and inadmissible in evidence and the same cannot be received to file. The petitioner has not assigned any valid and acceptable reasons to receive the documents. The documents are not genuine. The documents are concocted and created for the purpose of this suit. The petitioner has not stated the custody of documents in his written statement. The said documents are totally irrelevant to decide the issues of this suit. At the time of cross examination of D.W.1 the plaintiff side put up questions in respect of non-production of certain documents. Thereafter with an evil intention to fill up lacuna on the side of the petitioners. Hence,

it is prayed to dismiss all the petitions with costs.

4. Point to be decided is Whether the petitions are to be allowed as prayed for?
5. No oral or documentary evidence were let in on both sides.

6. Point:-

Heard both side. The learned counsel for the petitioner plaintiff would submit that the main suit is posted on 07.03.2022 for petitioner/3rd defendant side proof affidavit. Though the proof affidavit had been filed on petitioner/3rd defendant side the additional 3 documents sought to be marked had not been filed along with the same. This documents are very much essential to decide the matter of dispute between the parties and prayed to allow the petitions filed by him for recall and to receive additional documents.

7. Per contra, the learned counsel for the respondent would submit that the case is posted for further D.Ws on 20.10.2022 and at this stage the petitioner has come up with the present vexatious applications without any particular reason and the petitioner is not entitled to fill up the lacuna by way of additional documents and requested to dismiss all the petitions as they are not sustainable in law.

8. Considering the rival submission of the learned counsel on either side and on perusal of the records, this court finds that the main suit is filed for the relief of recovery of money. In the main suit, the case was posted for further D.Ws the petitioner has come up with the present applications at this stage. Though it is strongly objected on the side of respondent, this court deems it fit to allow the applications to ensure the fair chance given to the petitioner to permit him to mark the petition mentioned documents. Besides, if the petitions are allowed and DW1 is permitted to adduce further evidence on additional proof affidavit, the respondent also will get an opportunity for cross-examination of DW1. Hence, on the foregoing reasons, in order to avoid multiplicity of proceedings, this court holds that no prejudice will be caused to the respondent on account of allowing the aforesaid applications. Considering above said circumstances, this court is inclined to allow these applications and the point is answered accordingly.

In the result, these petitions are allowed. No costs.

Dictated to the Stenographer, directly typed by her in computer, corrected and pronounced by me in open court, this the 1st day of December 2022.

Sd/- N.Nagalakshmi,
I Additional District Judge,
Madurai.

Witness and exhibits on both sides:- Nil.

Sd/- N.Nagalakshmi,
I ADJ, Madurai.

I Additional District Court,
Madurai.

I.A.Nos. 377/2022 and 396/2022
in O.S.No. 221/2017

Draft / Fair Common ORDER

Date:-02.12.2022.
