



C.S. No.413 of 2017

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N.SESHASAYEE. J.,

The papers are placed before this court by the learned Additional Master - III essentially because the trial could not be concluded within the time stipulated by the court. This court is given to understand that midway through cross-examination of DW1, the plaintiff has sought the production of some documents and this aspect has been recorded by this court in its order dated 19.10.2022. The learned counsel for the defendants submits that the documents which the plaintiff seeks are not in the custody of the defendants.

2. The law is only too well settled that where the existence or availability of the document is established, and if they constitute best evidence for establishing a cause of action or defending a suit, then on the failure to produce the best evidence, adverse inference can always be drawn. To make the situation worse for the other party, the party who requires the production of the documents can either take out an application or a notice for the production of those documents or himself may produce the secondary evidence of the documents sought to be required from other side, after complying with the conditions required.



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3. It is clarified that this court refrains from making any statement as to the conduct of the party, but only records the statement on law applicable to the situation presented before the court. The matter is referred back to the learned Additional Master - III for resumption of cross-examination of DW1 and the plaintiff is permitted to take out necessary procedural recourse to seek the production of any document which he believes is available with the defendants.

4. The learned counsel for the plaintiff submitted that but for this, DW1 has been fully cross-examined. The matter is now posted before the learned Additional Master - III on 10.03.2023, for further evidence on the side of the defendants.

23.02.2023

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