Andhra High Court
A.P. Mineral Development ... vs Trimex Minerals Pvt. Ltd., ... on 21 November, 1997
Equivalent citations: 1998 (1) ALD 533, 1998 (1) ALT 182
Author: P. Venkatarama Reddi
Bench: P V Reddi, B R Raju
ORDER P. Venkatarama Reddi, J

1. The two appeals arise out of the common order passed by the I Additional Judge, City Civil Court, Hyderabad in two interlocutory applications- IA.Nos.1854 and 1855 of 1997 - filed by the plaintiff (respondent herein) pending the suit OS No. 1591 of 1997. The A.P. Mineral Development Corporation Ltd. (hereinafter referred to as 'Corporation') which is a State Government undertaking is the defendant in the suit and the appellant herein. Alongwith the appeals, we have heard the application filed by a company known as 'Gimpex Limited' seeking leave to file appeal against the order passed in IA No. 1855 of 1997.

2. The suit was filed by the respondent herein seeking a declaration that the letter issued by the defendant Corporation on 19-9-1997 is illegal and for a consequential declaration that the contract entered into between the plaintiff and the defendant on 19-2-1997 is subsisting. The plaintiff also sought for an injunction restraining the defendants from taking any action pursuant to the aforementioned letter including confiscation of Security Deposit and invocation of Bank guarantee. A mandatory injunction was also sought for that the defendant should continue the supply of barytes ore as per the terms and conditions of the contract dated 19-2-1997.

3. At this stage, we may advert to the substance of the letter dated 19-9-1997, the validity of which has been challenged in the suit. It is recited in the said letter that under the contract, the plaintiff was :required to buy four (4) lakh metric tonnes of processed A-grade barytes ore on ex-mine basis for export purpose during a period of one year from the dale of the contract. It is further stated, whereas the plaintiff was required to buy 33,000 MTs. per month, by the date of the letter, during a period of about seven months, only 45,000 MTs. was taken delivery of leaving a back-log of about 1,45,000 MTs. It is then stated "thus you have not complied with the schedule of buying and lifting as per the contractual obligations". The notice then refers to the fact that there was failure on the part of the plaintiff to perform the contract though the Corporation made the material available. It is stated that no proper explanation was given in reply to the notice dated 14-7-1997 proposing termination of the contract nor any assurance was given to make up the deficiency within the stipulated period. Alleging that there was total failure to perform the obligations under the contract, the Corporation (defendant), by the said letter, terminated the contract dated 19-2-1997 with immediate effect and forfeited the Security Deposit amount of Rs.1,60,24,600/- under clause 16 of the Agreement The plaintiff was also notified that the Corporation was invoking the Bank guarantee issued by the Bank of Baroda. Visakhapatnam for Rs.1,55,24,600/-. Aggrieved by this action taken by the defendant-Corporation, the suit aforementioned was filed in the City Civil Court, Hyderabad.

4. The two injunctions sought for pending the suit are:

(i) to restrain the defendant from taking further action pursuant to the impugned letter dated 19-9-1997 including the confiscation of Security Deposit and invocation of Bank guarantee; (IA1854/97).

(ii) to restrain the defendant from stopping supply of barytes ore "more particularly the quantity of 25000 tonnes, for which payments were already made by the plaintiff in pursuance of the impugned proceedings ..... dated 19-9-1997". (IANo.1855/97).

5. The trial Court granted both the prayers for interim relief substantially. IA No. 1855 of 1997 was allowed and the injunction was granted as prayed for. In IA No. 1854 of 1997 which relates to encashment of Bank guarantee, the injunction was granted subject to certain conditions. These conditions are extracted hereunder:

"(i) The defendant shall demonstrate losses, if any, till the contract subsists to the plaintiff. The plaintiff shall make the loss good within 3 days from the date of receipt of communication about the demonstrated loss.

(ii) The defendant is restrained from invoking Bank guarantee till the disposal of the suit or till the remaining period of contract.

(iii) The defendant is at liberty to invoke Bank guarantee if the plaintiff failed to comply with direction No.1 as given, above i.e., not making the loss good within 3 days from the date of communication of demonstrated loss.

(iv) It is stated by the defendant that a letter is addressed by the defendant to Bank for invocation of Bank guarantee. This Court has taken notice of subsequent event for moulding the relief. (This Court has already passed order on 23-9-1997 not to invoke the Bank guarantee).

(v) In the event of bank not releasing the amount. The defendant shall not receive any money thereunder till the disposal of suit."

6. With regard to IANo.1854 of 1997, it was observed by the learned trial Judge : '"The invocation of Bank guarantee while the contract is subsisting is uncalled for as there is no necessity to invoke the Bank guarantee. The plaintiff has shown its willingness to reimburse loss, if any, till the contract subsists." That the contract was still subsisting and the termination was unjustified was the basis for granting injunction in IA No.1855 of 1997 directing supply of barytes during the contract period. To elaborate, the learned Judge was of the view that even if the plaintiff was not in a position to lift 33,000 MTs. per month as agreed upon, it cannot be a ground to terminate the contract as there was no provision in the agreement for termination in case of not lifting the contemplated quantity of ore. The learned trial Judge further observed that "the contract prima facie subsists and the plaintiff has preferential right to purchase the ore." The other consideration which weighed with the trial Court to grant the injunction in IA No. 1855 of 1997 is that the plaintiff had entered into a contract on 10-9-1997 with a Mexican firm to supply 25,000 MTs. of ore and that the ship requisitioned by the plaintiff was berthed at Madras port.

7. As far as IA No. 1854 of 1997 is concerned, the learned trial Judge was of the view that the Bank guarantee can be invoked only if the defendant suffered loss by selling the unlifted quantity to third parties. As it was not the case of the defendant that the ore could have been sold at a higher price and loss was incurred thereby, there was no justification in invoking the Bank guarantee especially because the plaintiff has to suffer loss on account of non-fulfilment of the contract with the Mexican firm. If the Bank guarantee is invoked, according to the trial Court, the plaintiff will land itself in irretrievable situation and, therefore, the exception to the rule of honouring the Bank guarantees would come into play. On this premise, the above directions were given.

8. For the better appreciation of the case, it is necessary to refer in brief to the relevant clauses in the agreement dated 19-2-1997.

9. The Corporation agrees to sell and the buyer agrees to purchase 4 lakh MTs. of processed barytes ore of specified grade at a price of Rs.801.23 per MT ex-mine at Mangampet The ore supplied by the Corporation is intended for export but not for consumption/use within India. The mineral supplied under the contract is "meant for servicing the export contracts or orders with the foreign buyers". The contract will be in force for a period of one year. Clause 4(iv) says:

"The Corporation agrees to supply and the buyer agrees to buy processed barytes ore at the rate of 33,000 MTs. per month. In the event the Corporation fails to supply, the backlog will be carried forward in the succeeding month(s) within the contract period or extension, if any thereof."

Clause 11 reiterates the same stipulation :

"(i) The Corporation will supply the material at the rate of 33,000 MTs. in accordance with clause 4(iv) above on Ex-Mangampet Barytes Mine basis, Cargo will be delivered round the clock on all working days."

10. The buyer is required to pay 104% value of the cargo in advance by a demand draft in favour of the Corporation. The additional 4% value remitted by the buyer will be refunded soon after proper documents, such as copies of export order, H-Forms etc. , are received by the Corporation. Clause 15 is another important clause. It says :

"The buyer shall be responsible for performance of this contract. In the event of non-purchase and lifting of the material by the buyer as per the agreed delivery schedule at clause 4(iv) above within 30 days, the Corporation will be at liberty to dispose of the stocks to any other buyers)/ exporters) at any price and recover the losses incurred if any by the Corporation from such disposal of the stocks to other buyer(s)/exporter(s). In such an event the buyer shall stand to lose right over such quantity. Whether the Corporation disposes off the stocks to other buyers)/ exporters) or not as per the foregoing, the buyer is liable for all the losses incurred by the Corporation for such non-purchase of the material by them as per the schedule which includes payment of interest at bank rate for such delay."

11. Clause 16 enjoins that the buyer shall pay a security deposit to the tune of Rs.1,60,24,600/-. The amount of Rs.5 lakhs paid by the buyer by means of demand draft while submitting the tender is to be adjusted against the said amount and for the balance security deposit amount of Rs. 1,55,24,6007-an irrevocable Bank guarantee issued by Bank of Baroda, Asilmetta Branch, Visakhapatnam was furnished by M/s. Navayuga Engineering Co. Ltd. on behalf of the buyer. It seems that Navayuga Engineering Co. is an assignee of the contract.

Clause 16 then says : "The Corporation shall have the fullest liberty to exercise its right to enforce the said bank guarantee for the purpose of this contract and binding on the buyer and M/s. Navayuga Engineering Co. Ltd. ..... The security deposit amount including performance Bank guarantee shall not bear any interest"

(b) "Any sum of the money due and payable by the buyer to the Corporation under the contract will be adjusted against the security deposit/performance Bank guarantee in case the Corporation is unable to recover the due amounts from the buyer."

12. The learned Advocate-General appearing for the appellant-Corporation has contended that the lower Court was prompted by irrelevant considerations in granting the equitable relief of injunction, that the lower Court was not at all justified in granting temporary mandatory injunction to supply the barytes ore during the period of contract based on an erroneous view that the termination of the contract was illegal and that the injunction granted by the lower Court against invocation of unconditional and irrevocable bank guarantee is contrary to the settled principles laid down by the Supreme Court. The learned Advocate-General submits that the encashment of Bank guarantee does not depend upon the proof of actual loss and in any case, the question of loss has to be decided more properly in the suit. He further submits that the contract stands terminated on account of non-performance by necessary implication and there need not be a specific clause to that effect in the agreement. The view of the trial Court that irretrievable harm will be caused to the plaintiff has been assailed from the stand point of the test enunciated in Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd., . It is finally submitted that this is not at all a fit case to extend the equitable relief to the plaintiff having regard to its conduct and defaults. It is also pointed out that one of the grounds for granting the injunction i.e., the placement of the ship at Madras port for carrying the cargo of the plaintiff no longer exists as admittedly, the plaintiff subsequently cancelled the fixture to load 23,000 MTs. by M.V. Gemini Explorer to Mexico.

13. The learned senior Counsel Smt. Nalini Chidambaram appearing for the 3rd party-petitioner (Gimpex Ltd.), who is seeking leave to appeal has advanced arguments almost on similar lines especially on the question of breach of contract and the conduct of the respondent. The learned Counsel further submitted that the plaintiff misrepresented the facts to the Court and gave a wrong impression that it was ready to load 25000 MTs. of ore by the ship already berthed at Madras Port, whereas the letter written by the plaintiff on 1-10-1997 i.e., a few days after obtaining the injunction order to the shipping agent would indicate that the plaintiff did not want to utilise the ship despite obtaining the Court's order. As we are not inclined to grant leave to appeal, we do not consider it necessary to elaborate the arguments addressed by her.

14. The learned Counsel for the respondent/plaintiff Mr. A. Rama Narayana has justified the impugned order of the lower Court by reference to clauses 15 and 16 of the Agreement. It is pointed out that if in any month or months, the offered quantity is not lifted to the extent of 33000 MTs. the plaintiff forfeits the right over unlifted quantify but the right to buy the ore in future during the period of contract cannot be denied. He submits that the time is not intended to be the essence of The contract and the reason for repudiation of the contract by the appellant is not one of the grounds specified or contemplated by the Agreement. It is then submitted that before forfeiting the security deposit and invoking the Bank guarantee which is part of the security deposit, it must be made out that the Corporation incurred loss by reason of not lifting the stipulated quantity and that there must be a demand to reimburse the loss. In Ihe absence of proof of loss and demand to make good the loss, bank guarantee cannot be invoked at all. According to the learned Counsel, though the contract with the bank is an independent contract, it is still a contingent contract and the contingency arises only when a claim for reimbursement of loss is made by the Corporation but not otherwise. In this context, clause 16(b) extracted above is relied upon by the learned Counsel. The learned Counsel pointed out that although the fixture to load 23,000 MTs. by M.V. Gemini Explorer was cancelled subsequent to the impugned order and the ship was booked by the third party-petitioner on 4-10-1997, the Mexican contract still subsists and that the plaintiff is expecting another ship shortly to carry the cargo on its behalf

15. On a consideration of the rival submissions and on a prima facie view, we feel that the impugned order cannot be allowed to stand. The order passed by the lower Court in IA No. 1855 of 1997 is in the nature of a temporary mandatory injunction which is an extraordinary relief to be granted in exceptional circumstances, such as a case where the damage done is irremediable. We do not find any such exceptional circumstances. Even as regards prima facie case, the lower Court is not justified in readily assuming that the persistent failures on the part of the plaintiff to lift the quantity specified in clause 4(iv) "cannot be ground to terminate the contract". To say that the contract cannot be terminated in the absence of a specific covenant providing for termination on particular grounds or specified contingencies is nothing but over-simplification. Whether the contract was entered into with the fundamental assumption that certain quantities shall be lifted every month, whether it is obligatory to keep the contract alive despite the substantial non-performance of a fundamental obligation envisaged by the contract; whether the power of termination in the given circumstances is necessarily implied; whether time was and could be made the essence of the contract -these and allied questions concerning the performance and termination of the contract should be more appropriately dealt with after the trial of the suit. The termination of the contract by the Corporation after giving due notice to the plaintiff to make good the deficiency and to show cause cannot be faulted at the interlocutary stage. We do not want to dilate further on this point, lest any expression of view on merits is not proper at this stage.

16. The more important aspect that was missed by the trial Court is the conduct of the' plaintiff in an obvious bid to cover up its failure or inability to keep up the commitment of lifting 33,000 MTs. or substantial part of it. The unrefuted facts are revealed from the letters dated 14-7-1997 and 19-9-1997 issued by the Corporation shows that out of 2,31,000 MTs. which the plaintiff expected to buy under clause 4 (iv) by August, 1997, payment was made only for a meagre quantity of 45,000 MTs. and only 35,000 MTs. was taken delivery. Though there was a promise to lift a further quantity

of 45,000 MTs. by the end of July, 1997, even that was not fulfilled. Despite the lapse of half of the contract period approximately, not even 15% of the quantity was lifted. When this lapse or deficiency was pointed out by the Corporation, the plaintiff had taken an unreasonable stand as seen from the letter dated 21-7-1997. The first point raised by the plaintiff in the letter dated 21-7-1997 was that if the supplies were not made to other exporters, the orders would have been bagged by the plaintiff which would have enabled him to perform the contract. The next point raised by the plaintiff is that as the Corporation has already made "contingency arrangements" and entered into contracts with others, the Corporation will incur no loss and therefore there is no necessity to terminate the contract. In effect, the plaintiffs stand is this : Does not matter-whether the plaintiffis in a position to buy and export as per the contract; but so long as the Corporation is in a position to sell the unlifted quantity to others, the plaintiffs contract remains alive and it is left to the plaintiff whether to buy or not to buy at all. Thus, far from giving any assurance coupled with a concrete plan to buy and export the back-log quantity within a fixed time, the plaintiff claimed an unfettered right to buy or not to buy the ore till the contract period comes to an end. This unreasonable conduct on the part of the plaintiff, in our view disentitles the equitable relief of injunction in IA No.1855 of 1997.

17. Moreover, as already noticed, one of the grounds which weighed with the trial Court viz., that the ship for carrying the ore to Mexico was berthed at Madras Port, is no longer available as the fixture was cancelled and the ship M.V. Gemini Explorer carried the cargo of another parry.

18. The order of injunction is couched in a wide language so as to restrain the Corporation from stopping the supply of ore as a result of termination of the contract. On a literal reading, the words "more particularly the quantity of 25,000 MTs." does not have the effect of curtailing the generality of the order. But, it is clear from the observations in paragraph 16 of the impugned order that the learned Judge was inclined to grant injunction only to the extent of 25000 MTs. in view of the contract with the Mexican party in furtherance of which the plaintiff requisitioned the ship initially. This is clear from the following sentence:

"Mere supply of goods of 25,000 MTs. in any event will not amount to partially allowing the suit." Thus, it is clear that the injunction is confined to 25,000 MTs.

19. The view taken by us that the termination of the contract cannot be faulted at this stage and the plaintiff is not entitled to the equitable relief in the hands of the Court would have spared us of the need to dilate further on the first aspect. But, there is one important fact or which we must advert tc before we close the appeal against the IA No. 1855 of 1997, It is not in dispute that after the impugned order was passed on 27-9-1997, the plaintiff made the payment by way of demand draft for Rs.2 crores representing the cost of 25,000 MTs. Out of the same, the Corporation already supplied about 8,000 MTs. The balance amount has not been refunded. It is the case of the plaintiff that the Mexican contract still subsists and it is expecting another ship shortly for carrying the cargo to Mexico. Having regard to these subsequent events, we deem it just and proper to direct the respondent-Corporation to consider the question of supply of the balance quantity for which money has already been paid and take appropriate decision and communicate the same to the plaintiff within two weeks from today. We make it clear that such consideration shall be without prejudice to the stand taken by the Corporation that the contract was lawfully terminated and subject to the

satisfaction of the Corporation that the plaintiff will be able to export the said quantify within a time-frame. To this limited extent, the interim order is granted while superseding the order of injunction granted by the lower Court.

20. The next question is about the encashment of Bank guarantee. We have perused the Bank guarantee bond executed by the Bank of Baroda, Asilmetta Branch, Visakhapatnam in favour of the appellate-Corporation. It is recited therein that the Contractor (plaintiff and its assignee) agreed to furnish to the Corporation a performance guarantee for the faithful performance of the entire contract to the extent of Rs. 1,55,24,600/-"in addition to the HMD of Rs.5 lakhs converted into performance security/security deposit". In the agreement dated 19-2-1997 also, the bank guarantee is described as performance bank guarantee for Rs.1,55,24,600/- "towards balance security deposit". Thus, prima facie, in substance, the bank guarantee is treated as an integral part of security deposit which is obtained from the plaintiff for due performance of the obligations under the contract. The Bank guarantee is unconditional and irrevocable. This is what the operative portion of the bond says:

"We, Bank of Baroda, Asilmetta Branch .....do hereby guarantee and undertake to pay immediately on first demand in writing Rs.1,55,24,600/- in aggregate at any time without any demur, preservation, recourse, contest or protest, and/or without any reference to the contractor." Any such demand made by Corporation on the bank in respect of this bank guarantee shall be conclusive and binding notwithstanding any difference between the Corporation and the Contractor or any dispute pending before any Court, Tribunal, Arbitrator or any other authority." 0

21. As per the settled law, no restrain should normally be placed by the Court on the invocation of Bank guarantee of this nature. The legal position has been succinctly summarised by the Supreme Court in U.P. State Sugar Corporation v. Sumac International Limited, as follows:

"The law relating to invocation of such Bank guarantee is by now well settled. When in the course of commercial dealings an unconditional Bank guarantee is given or accepted, the beneficiary is entitled to realise such a Bank guarantee in terms thereof irrespective of any pending disputes. The Bank giving such a guarantee is bound to honour, it as per its terms irrespective of any dispute raised by its customer. The very purpose of giving such a Bank guarantee would otherwise be defeated. The Courts should, therefore, be slow in granting an injunction to restrain the realisation of such a Bank guarantee. The Courts have carved out only two exceptions. A fraud in connection with such a Bank guarantee would vitiate the very foundation of such a Bank guarantee. Hence if there is such a fraud of which the beneficiary seeks to lake the advantage, he can be restrained from doing so. The second exception relates to cases where allowing the encashment of an unconditional bank guarantee would result in irretrievable harm or injustice to one of the parties concerned. Since in most cases payment of money under such a Bank guarantee would adversely affect the Bank and its customer at whose instance the guarantee is given, the harm or injustice contemplated under this head must be of such an exceptional and irretrievable nature as would override the terms of the guarantee and the adverse effect of such an injunction on commercial dealings in the country."

22. The plaintiff successfully convinced the trial Court that its case falls within the second exception laid down by the Supreme Court i.e., irretrievable harm. To buttress the claim of irretrievable injury, the plaintiff harped on the fact that a ship requisitioned by the plaintiff was waiting at Madras Port to carry the cargo to Mexico. As already noticed, that ground is no longer available as the ship already sailed away- Moreover, the ambit of the second exception was explained by the Supreme Court in Dwarikesh Sugar Industries Ltd., case (supra). Their Lordships pointed out at paragraph 22:

"The second exception to the rule of granting injunction i.e., the resulting of irretrievable injury, has to be such a circumstance which would make it impossible for the guarantor to reimburse himself, if he ultimately succeeds. This will have to be decisively established and it must be proved to the satisfaction of the Court that there would be no possibility whatsoever of the recovery of the amount from the beneficiary, by way of restitution"

23. If the said test is applied, as it ought to be, we do not think that the plaintiff would suffer irretrievable harm or injury by the encashment of Bank guarantee by the Corporation.

24. The point stressed by the learned Counsel for the respondent that there could be no occasion for invoking the Bank guarantee unless the demand is made for reimbursement of loss cannot be accepted, atleast at this interlocutory stage. Whether or not the Corporation is justified in invoking the Bank guarantee by reason of the alleged non-performance of the contract and breach of contractual obligations is a matter which turns on the merits of the dispute between the plaintiff and, the defendant and in our view these considerations are not germane to the question whether the Corporation is entitled to call upon the banker to pay off the amount unconditionally agreed to be paid by the bank on demand. We shall not be understood to have expressed the view that the Corporation was justified in forfeiting the security deposit and resorting to the encashment of Bank guarantee- If the action of the Corporation is arbitrary and illegal, it is always open to the plaintiff to seek appropriate remedy to recover the amount or recoup itself from the loss. But, we are only on the limited question whether the plaintiff should be restrained from invoking the Bank guarantee and the Bank from honouring the same pending disposal of the suit. We do not think that in the light of legal position that has crystallised from a series of decisions of the Supreme Court, any such restraint can be placed after entering into merits of the dispute between the party on whose behalf the Bank guarantee was furnished and the other contracting party. We therefore vacate the injunction granted by the trial Court. We must, however, take note of the representation made by the learned Counsel for the respondent that in the event of injunction being vacated, the plaintiff itself will pay the amount covered by the Bank guarantee to the appellant-Corporation directly, if sometime is granted. The learned Counsel stressed that the plaintiff does not want to run the risk of marring good relations with the bank. In view of this representation, we direct that no steps should be taken for encashing the bank guarantee for a period of two weeks from today. In order to ensure that the plaintiff is not put to any prejudice in the event of the Court holding ultimately that the forfeiture of security deposit and realisation of the amount of Rs.1.55 crores is not justified in law, we further direct that the appellant-Corporation should pay to the plaintiff interest at 16% p.a on the amount paid by the plaintiff or realised from the Bank, in the event of the need to refund the amounts as per the Court's judgment

25. The two CMAs are allowed accordingly and the orders passed by the trial Court in IA No. 1854 and 1855 of 1997 are set aside subject to the directions given supra. We make no order as to costs.

CMP No. 15272 of 1997 in CMA SRNo.65895 of 1997 :

26. With regard to the application of M/s. Gimpex Ltd. to grant leave to appeal against the order in IA No.1855/97, we are of the view that there is no substantial ground to allow the application so as to enable a third party to the suit to intervene. The plea that by reason of supply of 17000 MTs. or so to the plaintiff pursuant to the injunction order granted by the trial Court, the supplies to the petitioner may be affected, even assuming it to be correct, is too remote a consequence that could merit the grant of leave to the petitioner. The petitioner-Gimpex Limited, in our view is neither a necessary nor proper parly to the CMA. It may be that Gimpex Limited challenged the award of contract to the plaintiff by filing a writ petition WP No.3677 of 1997. By doing so, we are not in a position to appreciate how the petitioner's claim for impleadment in the appeal gains more sanctity. In any case, in view of the vacation of injunction orders, practically, the grievance of the petitioner does not survive any longer. CMP No.15272 of 1997 is therefore dismissed. Consequentially, the CMASR No.65895 of 1997 need not be numbered.

27. Before closing the case, we must point out that there was considerable difficulty for us in knowing which documents were filed before the trial Court. This could have been avoided if exhibit numbers with 'P' & 'R' series are assigned to the documents filed and their brief description is indicated in index. This practice was being followed by the trial Courts until the decision of the learned single Judge of this Court in G. Sambrajyam v. P. Maha Lakshmamma and others, 1995 (1) ALD 358, wherein his Lordship observed that neither the Civil Rules of Practice (framed by the High Court) nor the provisions of CPC contemplate marking of documents in an interlocutary application. May be, the rules are silent; but, "it does not mean that marking of documents for the convenience of the parties and the Court, is prohibited or barred. In our view, there need not be express conferment of power in this behalf. The Court has inherent or incidental power to modulate the procedure not specifically laid down by the rules in an appropriate manner to promote general convenience and to facilitate easy reference. To avoid any confusion, the documents tentatively marked at the IA stage can be renumbered at the stage of trial of suit with 'A' & 'B' series, as is being done now, if they are proved or admitted in evidence. It is true that IAs cannot be enquired into a suits. But, it is far from saying that the documents referred to in the course of arguments or filed with the pleadings ought not to be indicated with appropriate serial numbers at the end of the order. Respectfully disagreeing with the view taken by the learned Judge, we hold that it is desirable to restore the old practice and procedure.