

GAHC010132992023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/185/2023

PRANAB KUMAR GHOSH AND ANR
S/O PRADYUT KUMAR GHOSH R/O HOUSE NO. 5 MANIK NAGAR 4TH BYE
LANE GUWAHATI 781005 DIST. KAMRUP METRO ASSAM

2: GITA RANI GHOSH
W/O PRANAB KUMAR GHOSH R/O HOUSE NO. 5 MANIK NAGAR 4TH BYE
LANE GUWAHATI 781005 DIST. KAMRUP METRO ASSA

VERSUS

NORTH EAST BUSINESS ENTERPRISE PRIVATE LIMITED
A COMPANY INCORPORATED UNDER TE PROVISIONS OF THE
COMPANIES ACT 1956 AND HAVING ITS REGISTERED OFFICE AT BELTOLA
KHANARA ROAD NEAR SONALI PATH BELTOLA BAZAR GUWAHATI
781028 DIST. KAMRUP METRO ASSAM

Advocate for the Petitioner : MR. R DUBEY

Advocate for the Respondent : MR N KALITA

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

26.02.2024

Heard Mr. R. Dubey, the learned counsel appearing for the petitioners. Also heard Mr. P. Choudhury, learned counsel representing the respondent.

2. This is an application under Article 227 of the Constitution of India challenging the order dated 12.06.2023 passed by the learned Civil Judge No.1, Kamrup (Metro) in Title Suit No.221/2008.

3. The petitioners are the defendants before the trial court. At the time of cross-examination of PW-1, the defendants exhibited one document marked as Exhibit-A. Subsequently, the plaintiff objected to the admission of the said document. Therefore, by the impugned order, the trial court held that the said document should be kept "under objection".

4. Being aggrieved by the aforesaid observation of the trial court, the revision petition has been filed.

5. Mr. Dubey has referred to the provision of law as laid down in Order 13 Rule 1 (3) (a) of the Code of Civil Procedure.

Order 13 Rule 1 of the CPC reads as under:

"1 [1. Original documents to be produced at or before the settlement of issues.

—(1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.

(2) The Court shall receive the documents so produced: Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in sub-rule (1) shall apply to documents— (a) produced for the cross-examination of the witnesses of the other party; or (b) handed over to a witness merely to refresh his memory.]"

6. Mr. Dubey further relied upon Order 7 Rule 14(3 & 4) of the Code of Civil Procedure.

7. In order to buttress his points, Mr. Dubey relied upon a judgment of the Supreme Court that was delivered in *R.V.E. Venkatachala Gounder v. Arulmigu*

Viswesaraswami & V.P. Temple, (2003) 8 SCC 752. In paragraph 20 of the said judgment, the Supreme Court has held as under:

“20. Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is *itself inadmissible* in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the *mode of proof* alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as “an exhibit”, an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play.....”

8. The learned counsel Mr. Choudhury submits that when the trial court held that the Exhibit-A shall be kept as “under objection”, no prejudice was caused to the defendants. According to Mr. Choudhury, the admissibility of said document can be decided by a trial court at the time of passing the final judgment.

9. I have considered the submissions made by the learned counsels of both sides.

10. Order 7 Rule 14 of the sub-rule (4) of the CPC lays down that the defendant is entitled to produce a document at the time of cross-examination of the plaintiff's witnesses. Although original documents are to be produced at or before settlement of issues, each party can produce new documents at the time of cross-examination of the witnesses of the other party. This is the law laid down by Order 13 Rule 1 sub-rule (3) of the Code of Civil Procedure.

11. Therefore, new documents can be produced at the time of cross-examination of the plaintiff's witnesses and according to Order 13 Rule 1 sub-rule (3) of the Code of Civil Procedure, both sides can produce new documents at the

time of cross-examination of the other party.

12. Thus, the trial court should not have kept the Exhibit-A “under objection”. The trial court has committed error in keeping Exhibit-A as a document “under objection”.

13. The revision petition is allowed. The impugned order is modified. Exhibit-A shall not be kept as a document “under objection”.

With the aforesaid direction, the revision petition is disposed of.

JUDGE

Comparing Assistant