THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.5722 of 2010

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.26.07.2010 in I.A.No.729 of 2010 in O.S.No.79 of 2003 on the file of VI Additional District Judge, Visakhapatnam.

2. The petitioner herein is the defendant in the above suit.

3. The respondent/plaintiff filed the said suit against petitioner for recovery of money on the basis of certain documents styled as ‘promissory notes’.

4. Written statement was filed by petitioner opposing the suit claim. Issues were framed. Trial commenced and an Advocate-Commissioner was appointed to record the evidence of parties.

5. Evidence affidavit of PW.1 was filed, and during the course of recording of evidence, PW.1 wanted to mark Exs.A.1 to A.8. On that day, the counsel for petitioner was not present, and according to petitioner he protested and raised an objection for marking those documents, but the documents were marked by the Court in spite of his protests.

6. The petitioner filed I.A.No.1155 of 2005 before the

Court below to decide the admissibility of Exs.A.1 and A.8. The Court below dismissed it as infructuous on 02.12.2005.

7. Thereafter, the petitioner preferred C.R.P.No.319 of 2006 before this Court. This Court dismissed the Revision with liberty to petitioner to adjudicate the point whether Exs.A.1 to A.8 were bonds covered under Section 2(5)(b) of the Indian Stamp Act, 1899 (hereinafter referred to as, 'the Act'), and stamp duty and penalty has to be paid thereon at the appropriate time. It held that the said contention is on the merits of the case. Thus, neither the Trial Court nor this Court had decided about the nature of the documents Exs.A.1 to A.8 at any point of time.

8. Subsequently, the evidence on the side of plaintiff/respondent was closed. When it was the turn of petitioner/defendant to lead evidence, taking advantage of the observation in the order dt.01.02.2006 in C.R.P.No.319 of 2006, petitioner again filed I.A.No.729 of 2010 questioning the admissibility of Exs.A.1 and A.8, and contended therein that in view of the decision of Supreme Court in **Bupin Santhilal Panchal v. State of Gujarat**[1], the Court below is bound to decide it.

9. Counter-affidavit was filed to this application by respondent contending that once documents are admitted and exhibited in evidence, objection as to the admissibility can only be decided while delivering the judgment upon conclusion of trial, and the objection regarding admissibility cannot be decided at this stage.

10. By order dt.26.07.2010, the Court below dismissed I.A.No.729 of 2010. It referred to the order dt.01.02.2006 in C.R.P.No.319 of 2006 and held that the objection raised by petitioner can be decided at the final hearing of the suit, and it cannot be decided when the matter is coming up for evidence of the defence' side.

11. Challenging the same, the present Revision is filed.

12. Heard Sri K.R. Prabhakar, counsel for petitioner and Sri T. Vinod Kumar, counsel for respondent.

13. The counsel for petitioner contended that objections as to admissibility of documents should be decided as and when they are raised and they cannot be put off to final hearing of case. He relied upon a judgment of this Court in **Pola Satish Kumar v. M/s.Kapil Chit Funds Pvt. Ltd., Warangal**[2], wherein the judgment of the Supreme Court in **Bupin Santhilal Panchal** (1 supra) has been followed and this Court had declared that if objection relates to deficiency of stamp duty of a document, the Court has to decide the objection before proceeding further.

14. On the other hand, the counsel for respondent contended that the order passed by the Court below is correct and did not warrant any interference by this Court in exercise of its power under Article 227 of the Constitution of India.

15. I have noted the submissions of both sides.

16. The order passed by the Court below itself records that before the Advocate-Commissioner was appointed to record evidence of both parties a lot of objections were raised and the Advocate-Commissioner returned the warrant in the middle and remaining part of the evidence was completed in the Court.

17. Proviso to Order 18 Rule 4 (iv) states that any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of arguments.

18. It is the specific case of petitioner that objections were raised before the Advocate-Commissioner regarding marking of documents but notwithstanding the said objections he marked the documents.

19. Although the counsel for respondent contended that the documents have been admitted and executed in evidence, I am of the opinion that such is not the case because the Advocate-Commissioner was not competent to decide the objections which had been raised by petitioner at the time of marking of the documents, and his duty was only to record the objections and submit the report to the Court and the Court will decide them.

20. It is true that in **Bupin Santhilal Panchal** (1 supra) and **Pola Satish Kumar** (2 supra), it has been held that objections regarding admissibility of documents on the ground that stamp duty thereon is deficient, have to be decided first before proceeding further. Although the judgment in **Bupin Santhilal Panchal** (1 supra) was cited before this Court when it decided C.R.P.No.319 of 2006, yet this Court in its wisdom held that the question whether documents Exs.A.1 and A.8 are 'bonds' under Section 2(5) (b) of the Act and stamp duty and penalty had to be paid thereon, was an objection relating to the merits of case and left it open to petitioner to agitate it at the appropriate time. Since petitioner's contention was not allowed to be adjudicated by this Court during trial, the inference open is that petitioner is entitled to raise that contention at the time of final hearing in the suit after the evidence is closed. The contention of counsel for petitioner that the said order can only be interpreted to mean that after closure of evidence on the side of respondent, the petitioner is at liberty to agitate it, cannot be accepted.

21. In this view of the matter, I do not find any error in the order passed by the Court below in holding that the objection raised by petitioner to the marking of Exs.A.1 and A.8 can be decided at the final hearing of the case.

Therefore, the Revision is dismissed. No order as to costs.

22. It is made clear that petitioner is entitled to raise the objection that Exs.A.1 and A.8 are 'bonds' covered by Section 2(5)(b) of the Act and that stamp duty and penalty had to be paid thereon, at the time of final hearing of the suit, and if such a contention is raised, the Court below shall decide it.

23. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 24-06-2015
Ndr/*

[1] AIR 2001 SC 1158
[2] 2007 (6) ALT 421