IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 3624 of 2013 (O&M)
Date of decision: August 7, 2015

Balbir Singh Wasu

...Petitioner

Versus

General Public and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. JS Wasu, Advocate,
for the petitioner.

Mr. Puneet Jindal, Senior Advocate with
Mr. R.S. Wasu, Advocate,
for the respondents.

K. KANNAN, J. (Oral)

1. The petitioner brings to challenge in revision an order passed by the trial court in the probate petition 2 of 1913. The petition was filed by the contesting respondents seeking for an order to be passed that document Exs. P.1 to P.40 which had been exhibited ought not to have been exhibited as evidence and that they should be rejected. An objection taken by the petitioner to the main was that the admissibility of the document has earlier been decided by the Additional District Judge, Chandigarh by his order dated 9.6.2006. He had held some documents to be admissible, save for documents which were held as inadmissible. This order was challenged before this court in CR No. 3987 of 2006 and the court rejected the challenge and dismissed the revision petition on 1.8.2008.

2. When several witnesses were examined before the court below,

a fresh objection was again taken up reiterating the original objection taken that exhibits P.1 to P.40 have not been properly proved and they should not be received in evidence. The Court, after setting forth the objection regarding the earlier adjudication made thereon referred to the fact as regards Ex. P.2 and P.3, they were 30 years old documents and per se admissible. Ex. P.4 the court observed was an exchange deed and Ex. P.3 was a mortgage deed to which M.S. Wasu was himself party and signatory to the document and hence they were admissible. Ex. P.28 which had been originally treated as inadmissible was a photograph and since the negatives had been subsequently filed, the court held that Ex. P.28 was also admissible. Exs. P.9 and P.10 which had not been previously held to be admissible were referred to by the Judge as letters by the Estate Officer which had been proved by PW.5, who was a Junior Assistant in the Estate office. Exs. P.11 and P.12 documents which had not been originally found to be admissible, photo copies of the documents by the Income Tax Commissioner were earlier held as inadmissible on 9.6.2006 and no further evidence has been given by the petitioner to make them admissible and hence the court observed that the same would remain inadmissible in evidence. Ex. P.15 was an order of the Industrial Claims Officer, Jalandhar, Ex. P.16 was the order of the Settlement Officer and Ex. P.17 was the letter of the office of the Regional Settlement Commissioner. They had been proved by PW.7 who was a Clerk at the Settlement Wing and Rehabilitation Division. Exs. P.18, P.23 to P.25 and P.31 had been earlier held to be inadmissible. Ex. P.23 was the photo copy of the general power of attorney executed by Harnam Singh Wasu who was the testator and P.24 was the another photo copy executed by him. Exs. P.25 and 35 were also photo copies and they remained inadmissible, since there was no justification provided for filing only copies.

3. In the manner of disposal, it would be, therefore, seen the court had found that in respect of some exhibits which we have referred to above continued to be inadmissible and the remaining documents exhibited had been subsequently proved and, therefore, they had been validly received. The court had also referred to the fact that an adjudication regarding admissibility had been already made by the District Judge, which was confirmed in revision and hence the matter cannot be reopened afresh.

4. I would notice that the case is for issue of a probate filed in the year 1993. The case has gone at this length only for the purpose of exhibiting documents and for receiving objections of the parties. It would be seem obvious as to who has been the cause for this kind of delay. I have not even slightest doubt in my mind that the petitioner contributes in a large measure to the complete travesty of justice and for derailing a quick trial. A number of times, it has been held that a document which is exhibited in court and assigned an exhibit number does not dispense with the proof of a document [Sait Tarajee Khemchand and others Versus Yelamarti Satyamalias Satteyya and others 1972 (4) SCC 562, L.I.C. of India & Anr vs Ram Pal Singh Bisen 2010 (4) SCC 491]. If amongst the documents which were exhibited, some of them, according to a person objecting to the admissibility, were not admissible for any reason, then it would always be possible for a person to contend that the documents which are exhibited are worthless piece papers and that no credence would be attached to it. We have come by difficult times and courts shoulder enormous strain by explosion of dockets. Several reasons could be attributed to them but a

significant reason is the manner in which we conduct our trial and how we understand and misunderstand the trial proceedings. This case is an outstanding illustration of how a party can browbeat and tease the court proceedings to absurd length.

5. Of the objections taken again by the counsel for the petitioner, I will find that Exs. P.5 to P.8 are the carbon copies of the letters written by the testator to the Estate Officer and the court has treated them as original themselves. According to him, the carbon copies, which were only secondary evidence, cannot be tendered without founding the justification for their production in the manner contemplated under Section 65 of the Evidence Act. There was no evidence of why the original could not be produced and, therefore, carbon copies could not have been received. Exs. P.9 and P.10 are letters written by the Estate Officer to Harnam Singh and Maninder Kaur and in this case the proof of the same was brought through PW.5, a person working in the Estate Office. The objections are taken with regard to every document for which the court found that the witnesses have been examined through whom proper exhibit numbers have been given. The matter ought to have rested there. If the arguments were still to be that any of the documents received ought not have been received and no reliance could be made on the same, it should have been taken at the time of arguments.

6. The practice of making objection to receiving documents and inviting courts to pass orders was prevalent at some point of time but we have also come by the decisions of the Supreme Court themselves pronouncing on what types of documents could be relevant and what type of documents could be objected to. I will not say that any of the laws so laid

down would become obsolete, it being impertinent for me even to suggest to such inference, but I must say that the Supreme Court itself was conscious how lawyers behave at the trial and how they scuttle smooth progress. It was stated i n Bipin Shantilal Panchal Versus State of Gujarat 2001 (3) SCC 1, a case dealing with admissibility of a document at the trial in criminal proceedings, when the courts were giving direction to all the subordinate courts and practitioners as to how it will deal with objections with regard to admissibility of documents at trial stage. The direction was not only to confined to criminal cases but it would seen that it was laying down a law that it shall be applied in all trial works, both civil and criminal. To eliminate delays at the trial, and fetter itself by constant obstruction by the parties, the court re-modeled the procedure and laid down as under:-

> "Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence, the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the judge or magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)

> The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal."

7. This decision will, therefore, leave us to understand that there was one particular situation where the court is bound to take an adjudication and then give a decision immediately. That would be with reference to a document which is unstamped, the reason being obvious that if an unstamped document is received without an objection, then the issue of admissibility itself will be barred by law by the language employed in Section 36 of the Indian Stamp Act. For any other document regarding admissibility, if the court can take an immediate decision and rule out its admissibility, the trial still must progress. If a person has an objection about the admissibility, then the same can be challenged at all times, if the judgment ultimately turns out to be against him, it could be taken as a ground of appeal available under Section 105 of the Code of Civil Procedure (for short **'the Code'**). The doors of revision are closed by virtue of amended provisions of Section 115 of the Code. The test shall be that if an order had been passed conversely to the orders passed, it should have

been gone to dispose of the case. The imperative for such an amendment was to ensure that parties do not obstruct trials and proceed to the higher forums to obtain stay of proceedings and allow for the cases to gather dust without trial. I cannot see this to be either a situation where the court has not taken a view. The court has taken a view about the admissibility of the document which it need not have even done. It could have reserved it in the light of the judgment in Bipin Shantilal Panchal's case (supra) to be considered at the time of arguments. If it was taking a view, it must have been still possible for the parties who were aggrieved that any reliance could be placed on admissibility of document to urge at the time of arguments that the documents which have been received in evidence ought not have been received and it should be eschewed. The court would then be bound to pronounce the reliance that could be placed on those documents at the time of delivery of judgments. If that judgment also contains an error in making reliance on documents, which it should not have done, there is a provision available for appeal in the manner referred to above through Section 105 of the Code setting out the same ground as amongst the grounds of appeal.

8. That leaves us for consideration whether there is anything for intervention under Article 227 of the Constitution. As broad as the power of the courts are in exercise of the supervisory jurisdiction, so shall it be circumspect that it does not make interference unnecessarily and confine such intervention only when there is a gross error or illegality in the orders passed. It has been the experience in our courts that what was not possible under Section 115 of the Code is now brought speciously through Article 227 of the Constitution. The liberal approach may well be sometime even a

mistaken populist approach. I would like to bring discipline in the proceedings and ensure that courts' time is not wasted by frivolous revision petitions. The issue of how the document could be dealt with when the secondary evidence is produced where original was not shown to be even unavailable has been considered by this court itself in several judgments which are reported. To state a few Simar Pal Singh Versus Hakam Singh 2009 (2) PLR 562, S.P. Arora Versus Satbir Singh 2010 (5) RCR 530, Atma Nand (deceased) through LR Versus Ram Sarup (deceased) through his LRs 2012 (1) PLR 440, and Anupam Jain Versus Kulwant Gupta, Civil Revision No. 2991 of 2012 decided on 9.3.2015. The judgments, which are pronounced in courts and reported are not for bound to act as tools of guidance for practitioners and for subordinate Judges. The High Court does not waste its time for pronouncing long judgments for ornamental purpose for its own library. It is for the practitioner to read and follow. I would find in this case a deliberate purpose to delay.

9. A party who comes to court and tests the correctness of the order passed as regards admissibility and secures a failure must proceed along the trial and ensure that all the objections are brought at appropriate time, which, in my view, would have been at the stage of arguments at the final stage. But in this case, the petitioner has reopened the issue of admissibility of documents on the ground that the High Court was passing an order earlier in Civil Revision No. 3987 of 2006 without minding the admissibility correctly and that they all are per *in curium* will be an absurd argument to make. It cannot be permitted to term a decision of the High Court as per *incurium* and call for a fresh adjudication by a subordinate Judge unmindful of what the higher forum has already stated. The argument

canvassed by the learned counsel would promote arrogance. No subordinate court will arrogate to itself to say that the decision of the High Court is per *incurium* and notwithstanding its decision rendered earlier, the documents exhibited in evidence and which were found to be admissible could be again re-opened because the High Court did not properly consider the same. The subsequent petition filed by the petitioner was on flimsy reasons. If there are any documents which are received through a witness who was unavailable for cross-examination, it would be possible for the parties to argue that the evidence of such a person who was unavailable and whose chief examination has alone been brought cannot be read in evidence. I have elicited already the law with reference to the judgments of the Supreme Court that a document which is exhibited does not dispense with proof nor does it allow for the person who has obtained the exhibit number assigned, the benefit of its reliance without adequately bringing proof of the same in the manner required by law.

10. I would therefore not find any virtue in the arguments that there are exhibits which are still not proved. If they are not proved, according to the petitioner, he ought to take himself fortunate that the other side remained ignorant of the procedure and take advantage of the same at the time of arguments. The petitioner need no worry for the other side that they attempted to make reliance on certain documents without appropriate proof. If that was the course undertaken by the petitioner before the court below, they will take the consequences of their own indiscretion.

11. The learned counsel for the petitioner places reliance on some judgments of the Supreme Court, of which which are stated as positions of law relating to the exhibition of documents and reliability. I state them one

after another to spare the court of odium of disposing the case without adverting to the decisions cited. None of these decision be detract from the dispensation which I have undertaken and expressed in the above paragraphs. In Ravir Singh and another Versus Union of India 2005 (4) RCR 277, the court was holding that for bringing documentary evidence on record, the same must not only be admissible but the contents must be in accordance with law. The counsel would refer to the fact that a witness who speaks about the Will and attested the document at the last page, if he does not know the contents of the Will, the will cannot be exhibited through him. The proposition made is clearly wrong and untenable. A witness does not require to know the contents of the Will. The meaning of attestation is that a person attests to the signature of the documents. It has been held by the Privy Council in Rajammal Vs. Sapapathi (1945) MLJ 397 ()C) that an attestor can state that he was either present at he time when the executor signed or obtained his acknowledgment. The testator has a right to keep to the contents of his Will secret and call for witness to sign only as attestor to instrument where he has signed. It would, therefore, serve the purpose of execution of the document as well as the mental capacity of the person who executed the document he is not required to know its contents.

12. In Nirmaljeet Kaur Vs. State of M.P. and another (2004) Supreme Court Cases 558, the court was holding that per *incuriam* means *per ignoratium* and this was cited in context of an attempt by the learned counsel to state that previous dispensation of the High Court may have failed to note certain factors about the admissibility of some documents and that need not deter any party to challenge the same again before the subordinate court. I have pointed out to the absurdity of such argument in

the earlier portion of judgment and I do not feel constrained to re-produce it. In Sri Lakhi Baruah and others Vs. Sri Padma Kanta Kalita and others AIR 1996 Supreme Court 1253, the court was holding that certified copy of 30 years old document will not obtain presumption under Section 90 of the Evidence Act. I have no quarrel with the same and this is a judgment which the petitioner may well use if any reliance is made on the document which could not have been relied. In Harihar Prasad Singh and another Vs. Deonarain Prasad and others AIR 1956 Supreme Court 305, the court was again setting out the law on the extent of presumption which would be available under Section 90 of the Evidence Act. This judgment will be understood in the same context as earlier decision. Learned counsel has cited other judgments which are not relevant for the purpose of disposal of this revision petition but in my view only to overwhelm the court with vile motive to engage in purposeless mumbo-jumbo.

13. I dispatch the revision petition with the disdain that it deserves. The petition is meritless and if I spare any imposition of exemplary costs, only because Section 35-A of the Code exempts exemplary costs for the revision petition. I dismiss the revision petition with costs of Rs. 3,500/- and exhort the counsel who is himself a son of the petitioner in this case to display responsible conduct at the trial, as behoves a person of his standing of over 25 years of practice.

August 7, 2015 **(K.KANNAN)**
prem **JUDGE**

PREM SINGH
2015.08.19 10:35
I attest to the accuracy and
integrity of this document