

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 486 of 2014 (O&M)
Date of decision: January 19, 2015

Mrs. Anant Kaur Chahal

.. Appellant

v.

Sh. A. S. Mann

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. S. D. Sharma, Senior Advocate with
Ms. Shagun Sharma, Advocate for the appellant.

Mr. Ashok Aggarwal, Senior Advocate with
Mr. Mukul Aggarwal, Advocate for the respondent in
RSA No. 486 of 2014.

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Rajesh Bindal J.

1. This order will dispose of two appeals bearing RSA Nos. 486 and 3580 of 2014, as common questions of law and facts are involved. Arguments were heard at motion stage for final disposal of the appeals with the consent of the parties.

2. Two appeals have been filed against a common judgment and decree of the lower appellate court in a suit for permanent injunction and specific performance of agreement to sell filed by the respondent-plaintiff, vide which the appeal filed by the respondent was allowed and the cross-objections filed by the appellant, were dismissed.

3. Briefly, the facts, as are available on record, are that Bhagwan Kaur Sidhu (deceased) was owner of House No. 1623, Sector 7-C, Chandigarh. She died on 18.4.1984 leaving behind the appellant as the only

surviving legal heir. In the record with Estate Office, Chandigarh, the house remained in the name of Bhagwan Kaur Sidhu-deceased. The appellant was approached by the respondent-plaintiff through his friend in England, as she was desirous of selling the house. She came to India. The respondent met her at Mumbai. Oral memorandum of understanding was reached with regard to sale of the house in question, which was reduced into writing on 12.3.2000. A sum of ₹ 1,00,000/- was paid by the respondent-plaintiff to the appellant-defendant. The sale consideration of the house in question was fixed at ₹ 41,00,000/-. On 3.5.2000, the respondent-plaintiff again met the appellant and requested her to give papers for transfer of the house in question in her name in the record with Estate Office, Chandigarh. The respondent was given power of attorney to pursue the matter with Estate Office, Chandigarh. It is being further noticed on the basis of pleadings in the judgment of the lower appellate court that the appellant came to Chandigarh on 19.10.2000 for completing other documents/ formalities when she was paid another sum of ₹ 6,00,000/- in cash, for which a receipt was duly signed in the presence of witnesses. It was further pleaded that the appellant also executed an agreement to sell in favour of the respondent on 19.10.2000 knowing that formalities for transfer of the house in the name of the appellant have been completed and transfer letter is likely to be issued within a couple of days. The suit for injunction was initially filed by the respondent-plaintiff on 13.2.2001 on the plea that the appellant was proposing to sell the property to some other person though the respondent-plaintiff was ready and willing to buy the same. In the agreement to sell, last date fixed for execution of the sale deed was 5.4.2001 or within two months from the date of transfer of the house in the name of the appellant. Later on, an application was filed by the respondent-plaintiff for amendment of the suit for claiming the relief of specific performance of agreement to sell dated 19.10.2000, which was allowed on 22.8.2002.

4. The plea taken by the appellant in reply to the suit was that agreement dated 19.10.2000 was a forged document as the same was never executed. The appellant never came to Chandigarh between 1.10.2010 and 31.12.2000. ₹ 6,00,000- were neither received by the appellant nor any

receipt was issued. The execution of oral memorandum of understanding on 12.3.2000 between the parties and receipt of ₹ 1,00,000/- as advance was accepted. It was pleaded by the appellant that oral memorandum of understanding stood cancelled and the respondent was at liberty to collect ₹ 1,00,000/- from her.

5. On the pleadings of the parties, the learned trial court framed the following issues:

- “1. Whether the suit of the plaintiff is maintainable in the present form ? OPD
2. Whether the plaintiff is estopped by her own act and conduct from filing the present suit ? OPD
3. Whether the defendant entered into agreement to sell in favour of the plaintiff dated 19.10.2000 and received Rs. 6 lacs as earnest money at that time besides Rs. 1 lac received at the time of oral understanding ? OPP
4. Whether the plaintiff is entitled to specific performance of agreement to sell ? OPP
5. If issue No. 4 is proved, whether plaintiff is not entitled to recovery of Rs. 14 lacs as damages ? OPP
6. Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP
7. Relief.”

6. The plaintiff besides appearing himself produced an expert witness for comparing the signatures of the vendor and a witness from the Estate Office, Chandigarh. The appellant did not lead any evidence and was proceeded against ex-parte.

7. Considering the pleadings and evidence led by the vendee, the trial court partly decreed the suit directing the appellant to pay a sum of ₹ 14,00,000/- to the respondent, i.e., double the amount of earnest money. However, the relief of specific performance and permanent injunction was declined. Against the judgment and decree of the trial court, the respondent-plaintiff preferred appeal before the learned lower appellate court seeking relief of specific performance of agreement to sell in which

the appellant filed cross-objections. The learned lower appellate court while accepting the appeal filed by the respondent-plaintiff directed the appellant to execute the sale deed, whereas the cross-objections filed by the appellant were dismissed as time-barred. It is against the aforesaid judgment and decree that the appellant-defendant has preferred two appeals.

8. The substantial questions of law raised by the appellant in both the appeals are extracted below:

“RSA No. 486 of 2014

- a) Whether the judgments and decrees of both the courts below are based on inadmissible oral and documentary evidence brought on record by the respondent ?
- b) Whether the decree can be passed in a suit of the respondent without proving the documents ?
- c) Whether photo copies of the documents, the originals of which were neither attached with the plaint nor later on brought on record at the time of evidence by the respondent are admissible without obtaining the permission of secondary evidence ?
- d) Whether the approach of both the courts below is quite erratic because the core questions regarding the admissibility has not been decided ?
- e) Whether the courts below are wrong in not interpreting the Memorandum of Undertaking dated 12.3.2000 in the correct perspective ?
- f) Whether finding regarding the cross objections dismissing them on delay is perverse ?
- g) Whether the courts below are wrong in relying upon inadmissible evidence of the respondent and ignoring the admissible evidence of the appellant ?
- h) Whether even without the filing of cross objections the favourable pleas before the appellate court were available to the appellant to oppose the wrong finding given by the trial ?

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- a) Whether cross objections filed by the appellant were wrongly rejected ?
- b) Whether the judgments and decrees of both the courts below are based on inadmissible oral and documentary evidence brought on record by the respondent ?
- c) Whether the decree can be passed in a suit of the respondent without proving the documents ?
- d) Whether photo copies of the documents, the originals of which were neither attached with the plaint nor later on brought on record at the time of evidence by the respondent are admissible without obtaining the permission of secondary evidence ?
- e) Whether Ld. Addl. District Judge has committed error by not deciding the core question of valid service ?
- f) Whether the courts below are wrong in not interpreting the Memorandum of Undertaking dated 12.3.2000 in the correct perspective ?
- g) Whether finding regarding the cross objections dismissing them on delay is perverse ?
- h) Whether the courts below are wrong in relying upon inadmissible evidence of the respondent and ignoring the admissible evidence of the appellant ?
- i) Whether even without the filing of cross objections the favourable pleas before the appellate court were available to the appellant to oppose the wrong finding given by the trial ?”

Arguments of appellant

9. Mr. S. D. Sharma, learned senior counsel for the appellant submitted that the fact that the respondent had approached the appellant for sale of the property in dispute and oral memorandum of understanding was reduced into writing on 12.3.2000, is not in dispute. Receipt of ₹ 1,00,000/- is also admitted. However, he submitted that in the oral memorandum of

understanding, it was mentioned that in case the house in question is not transferred in the name of the appellant within 120 days, the oral memorandum of understanding shall be deemed to be cancelled. Undisputedly, the property in question was not transferred in the name of the appellant in 120 days from 12.3.2000 and had not even been transferred till today, hence, the oral memorandum of understanding had become a waste paper. The appellant had offered to return ₹ 1,00,000/- received by her, which she is still ready and willing. Learned counsel further submitted that for getting the property transferred in the name of the appellant, the respondent approached her at Mumbai, where she executed a general power of attorney in his favour for the purpose on 3.5.2000, but still the property could not be transferred by the respondent. He further submitted that the alleged agreement to sell dated 19.10.2000 projected by the respondent is a forged document. The appellant never executed the same. In fact, what to talk of visiting Chandigarh on 19.10.2000, the appellant was not even present in India on that day. The respondent has also shown that certain other documents were signed by the appellant on that day. The position with reference to that is also same.

10. While referring to the provisions of Order 7 Rule 14 CPC, as existed prior to the amendment w.e.f. 1.7.2002, and the amended provisions, Mr. Sharma submitted that in terms of the un-amended provisions, at the time of filing of the suit, the plaintiff was required to produce the original of the document in his possession in court and submit the document or a copy thereof with the plaint, whereas the amended provisions provided for submission of the document and the copy along with the plaint. In the case in hand, initially the suit was filed for injunction. Amendment application filed for seeking the relief of specific performance of agreement to sell was allowed on 22.8.2002. As the amendment had already been carried out in the provisions, the respondent was required to submit original of the document, namely, the alleged agreement to sell dated 19.10.2000 along with the plaint. However, learned counsel for the respondent failed as he merely produced the photo copy thereof.

11. Further, while referring to Order 7 Rule 18 CPC (un-amended), it was submitted that if the document in original is not filed initially, the same can be produced with permission of the court. In the case in hand, no permission was ever sought. In fact, the original agreement to sell has not seen the light of the day as far as the court is concerned, as the respondent never produced the same either with the plaint or during the course of evidence. Only the photo copy is on record. Merely mentioning in the affidavit filed by the respondent that he brought the original is meaningless for the reason that the affidavit for examination-in-chief is prepared before filing in court and the same is just taken on record. Once in the evidence, photo copy of the document was being produced, the loss thereof was required to be proved and further permission of the court was required, but in the present case the respondent did not follow that procedure. In support of the plea that on failure to submit the document in original with the plaint, the suit must fail, reliance was placed upon judgment of this court in Som Parkash Bansal v. Managing Committee, Hindu Higher Secondary School, Kaithal and another, 2003 (1) CCC 304.

12. With reference to the agreement to sell dated 19.10.2000 and the manner in which the same was proved, learned counsel for the appellant submitted that besides the statement of the respondent-plaintiff himself, who had even gone to the extent of identifying the signatures of the vendor and also producing the expert, the respondent-plaintiff failed to produce the witnesses to the agreement and the Notary. He further submitted that though an expert had been produced to prove that signatures on the agreement to sell are of the vendor only but the same does not inspire confidence for the reason that even from naked eye, one can see that both the signatures differ substantially. Once the appellant had specifically denied execution of the agreement to sell dated 19.10.2000, heavy onus was on the respondent-plaintiff to prove the same but he failed. No witnesses to the agreement to sell was produced before the court. Though both the courts below have opined in his favour, but the findings are perverse. It was further submitted that despite the finding by the trial court in favour of the respondent-plaintiff regarding the agreement to sell, it only granted relief of refund of

₹ 14,00,000/- to him, i.e., double the earnest money already paid by him. During the pendency of the appeal filed by him seeking specific performance of agreement to sell, the respondent realised that the evidence produced by him in support of the agreement to sell is not sufficient, hence, he filed an application for producing additional evidence, namely, the witnesses to the alleged agreement to sell, however, the same was withdrawn.

13. While admitting the fact that the case of the appellant has not been properly conducted for the reason that the appellant is based at Mumbai and the counsel, who was initially engaged expired and there was lack of communication, learned counsel submitted that after the respondent filed appeal against the judgment and decree of the trial court, the appellant had put in appearance. In terms of Order 41 Rule 22 CPC, the appellant was entitled to impugn even the findings recorded against her in the judgment of the trial court without even filing the appeal, even though right to file cross-objections is also available. In the case in hand, initially the appellant contested the appeal, however, later on as advised, cross-objections were also filed but the same were dismissed as time-barred. Once without even filing the cross objections the appellant is entitled to argue on the issue, which had been decided against her by the trial court, filing or non-filing of cross-objections is of no relevance once those have been dismissed on account of delay. The same be treated to have not been filed as were not entertained on account of delay as even without that also the appellant had the right to assail the findings of the trial court against her.

14. Learned counsel for the appellant submitted that considering the totality of circumstances, in the case in hand, the judgments and decrees of the courts below be set aside and the matter be remanded to the court below to enable the appellant to lead evidence to show that she never executed the agreement to sell as she was not even present in the country on that day.

15. On the other hand, Mr. Ashok Aggarwal, learned senior counsel for the respondent submitted that oral memorandum of understanding, which was reduced into writing on 12.3.2000, is admitted.

Subsequent thereto the appellant entered into an agreement to sell with the respondent on 19.10.2000 as the formalities for transfer of the property in favour of the appellant had been completed. The last date for execution of the sale deed was fixed as 5.4.2001. As the respondent came to know that the appellant is trying to sell the property to some other person, suit for injunction was filed on 13.2.2001, which was later on amended to seek the relief of specific performance of agreement to sell. For this, application was filed on 3.5.2002. Once the aforesaid application was filed by the respondent before the amendment of Order 7 Rule 14 CPC w.e.f. 1.7.2002, the provisions as existed prior thereto were applicable. In terms thereof, submission of copy of the document relied upon by the plaintiff in his plaint was also sufficient. The respondent had produced the original before the court and submitted a photo copy thereof in the court along with list of documents. The provisions of Order 7 Rule 14 CPC after the amendment require submission of the document and a copy thereof. Earlier it could be either of two, hence, there was complete compliance of the provisions of Code of Civil Procedure. It was further argued that when the respondent-plaintiff appeared in the witness box along with his affidavit in his examination-in-chief, he had produced the original of the agreement to sell in court and annexed a copy thereof with the affidavit. It has been so mentioned specifically in the affidavit (Ex. PA).

16. Learned counsel for the respondent further submitted that in the case in hand, initially written statement was filed by the appellant but she neither cross-examined any of the witnesses of the plaintiff nor produced any evidence in support of her claim. No objection was raised in the written statement regarding non-production of original document along with the plaint in the court at the time of filing of the suit. In the absence thereof, the courts below did not commit any illegality in decreeing the suit filed by the respondent-plaintiff. The quality and quantity of evidence cannot be questioned as it is to the satisfaction of the courts below where execution of the agreement to sell dated 19.10.2000 had been duly proved. The suit filed by the respondent-plaintiff was decreed by the trial court only to the extent of refund of double the amount of earnest money. Aggrieved against the

same, the respondent-plaintiff filed appeal before the lower appellate court. The appellant was not even aggrieved, hence, did not file appeal. After service of notice in the appeal, the appellant had put in appearance through counsel before the lower appellate court on 8.5.2008, when even interim stay was also granted in the presence of her counsel. Even application for re-calling of the stay order was also filed. Besides that, separately even an application was filed before the trial court for setting aside of the ex-parte decree. The same was dismissed in default on 6.1.2011. The learned lower appellate court was quite indulgent in the present case as the appellant was called in person in court and her statement was also recorded. In the statement so recorded, the appellant even denied filing any written statement, though reliance is sought to be placed on the pleadings which have no relevance in the absence of any evidence in support thereof. She did not even file any application before the lower appellate court to lead additional evidence. After having failed in both the courts below, who have concurrently found that the agreement to sell is duly proved, there is no material on record on the basis of which the appellant can assail the findings so recorded.

17. Mr. Aggarwal, learned senior counsel for the respondent, further submitted that though it is sought to be claimed that the appellant was not even in the country on the date of execution of agreement to sell and in support of the plea, reliance was sought to be placed on a photo copy of the passport produced in court, however, a perusal thereof shows that it was issued on 13.2.2001, hence, not relevant.

18. It was further contended that no doubt Order 41 Rule 22 CPC gives liberty to a party to assail the findings recorded by the trial court against him without even filing appeal or cross-objections. In the case in hand as the appellant had chosen to file cross-objections and the same were dismissed as time-barred, she cannot be permitted to raise argument on the issues decided against her. Once the issue on behalf of the appellant was not there before the first appellate court, the same cannot be permitted to be raised before this court. Though plea of fraud or forging the agreement to sell had been raised, but for that pleading is not sufficient. The same is

required to be specific and evidence is required to be led in support thereof. Not only this, even the witnesses produced by the respondent-plaintiff had not been cross-examined. At that stage, the agreement to sell was produced in court by the respondent-plaintiff, which was not objected to. PW2-Devender Prasad, Document Expert, had proved the signatures of the vendor on the agreement to sell while comparing with admitted signatures of the appellant on the documents filed in court. It has specifically been mentioned in his statement that he had seen the original of the agreement to sell and had taken the signatures from the document in possession of the plaintiff.

19. Learned counsel further submitted that the respondent-plaintiff produced documents (Ex. PW3/1 to Ex. PW3/9), i.e., the documents executed by the appellant for transfer of the house in her name and submitted in the Estate Office, Chandigarh. As these had come from the possession of the Estate Office and produced by the witness from there, hence, the respondent-plaintiff was not required to prove anything about that.

20. In response to the contentions raised by learned counsel for the respondent-plaintiff, learned counsel for the appellant submitted that some contradictions in the statement of the appellant recorded by the lower appellate court are on account of her advance age, however, that shows her fair approach. Regarding passport, learned counsel submitted that due to error, wrong copy had been placed on record, however, a copy of the passport for the period in question showing that the appellant was not in country on 19.10.2000, when alleged agreement to sell was executed, is available and can be produced in case opportunity is granted for doing substantial justice between the parties.

21. Heard learned counsel for the parties and perused the relevant referred record.

22. The following substantial questions of law arise for consideration by this court in the set of appeals:

1. Whether non-furnishing of documents along with the plaint at the time of filing thereof is fatal ?

2. Whether a party can address arguments on the issue decided against him by the trial court in an appeal filed by the opposite party without filing appeal or cross-objections ?
3. Whether photo copies of the documents, the originals of which were neither attached with the plaint nor later on brought on record at the time of evidence by the respondent are admissible without obtaining the permission of secondary evidence ?

Question No. 1

23. In this regard, the contention sought to be raised by learned counsel for the appellant was that Order 7 Rule 14 CPC provides that when the plaintiff files a suit relying on a document in his possession, he is required to produce the same in court along with the plaint and deliver the document and a copy thereof. In case, it is not done, subsequently the same shall not be permitted to be produced without leave of the court. The submission was that as per the un-amended provisions of Order 7 Rule 14 CPC, the document was required to be produced in court, however, a copy thereof could be furnished with the plaint. With the amendment effective from 1.7.2002, the requirement is that document and a copy thereof is required to be submitted along with the plaint. It was a conscious amendment made in CPC to shorten the litigation, which was required to be complied with strictly. In the case in hand, at the time when application for amendment of the plaint seeking relief of possession by way of specific performance of agreement to sell dated 19.10.2000 was allowed on 28.8.2002, the amended provisions were applicable, hence, there being non-compliance of the provisions of Order 7 Rule 14 CPC, the suit deserved to be dismissed on that account only.

24. Order 7 Rule 14 CPC, as existing after the 2002 amendment, is extracted below:

14. Production of document on which plaintiff sues or relies.- (1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his

claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in possession or power of the plaintiff, he shall, wherever possible state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.”

25. The Code of Civil Procedure is a law relating to procedure and procedural law is always intended to facilitate the process of achieving the ends of justice. The issue regarding interpretation of a procedural law was considered by Hon'ble the Supreme Court in State of Punjab and another v. Shamlal Murari and another, (1976) 1 SCC 719. The relevant paragraph thereof is extracted below:

“.... We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, the procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all, courts are to do justice, not to wreck this end product on technicalities....”

26. The issue was considered in Sardar Amarjit Singh Kalra (dead) by LRs v. Pramod Gupta (Smt.) (dead) by LRs. and others, (2003) 3 SCC 272 by a Constitution Bench of Hon'ble the Supreme Court. The relevant lines thereof are extracted below:

“....laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice.”

27. Thereafter, the question was considered by Hon'ble the Supreme Court in Kailash v. Nanhku and others, (2005) 4 SCC 480, where the issue was as to whether the provision of Order 8 Rule 1 CPC, which provide for time period for filing of written statement by the defendant after service of summons is to be applied strictly, wherein Hon'ble the Supreme Court opined that the rule has to be construed as directory and not mandatory and in special circumstances, the court has the power to extend the period prescribed in the rules for filing of written statement. The relevant paras thereof are extracted below:

“30. It is also to be noted that though the power of the court under the proviso appended to Rule 1 Order 8 is circumscribed by the words “shall not be later than ninety days” but the consequences flowing from non-extension of time are not specifically provided for though they may be read in by necessary implication. Merely because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.

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33. As stated earlier, Order 8 Rule 1 is a provision contained in CPC and hence belongs to the domain of procedural law. Another feature noticeable in the language of Order 8 Rule 1 is that although it appoints a time within which the written statement has to be presented and also restricts the power of the court by employing language couched in a negative way that the extension of time appointed for filing the written statement was to be later than 90 days from the date of service of summons yet it does not in itself provide for penal consequences to follow if the time schedule, as laid down, is not observed. From these two features certain consequences follow.

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36. The Court further held that the provision is more by way of procedure to achieve the object of speedy disposal of such disputes. The strong terms in which the provision is couched are an expression of “desirability” but do not create any kind of substantive right in favour of the complainant by reason of delay so as to debar the respondent from placing his version in defence in any circumstances whatsoever.

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45. However, no straitjacket formula can be laid down except that the observance of time schedule contemplated by Order 8 Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. We hold that Order 8 Rule 1, though couched in mandatory form, is directory being a provision in the domain of processual law.”

28. Similar view was expressed by Hon'ble the Supreme Court in Salem Advocate Bar Association (II) v. Union of India, (2005) 6 SCC 344 and R. N. Jadi & Brothers and others v. Subhash Chandra, (2007) 6 SCC 420 and by this Court in Gokal Chand v. Smt. Shanti Devi and others, (2010) 7 RCR (Civil) 1718 and Harphool Singh v. Subhash Chander, 2013 (5) RCR (Civil) 111.

29. The issue has been considered by Delhi High Court in CM (M) No. 807 of 2008- M/s Ansal Properties & Infrastructure Ltd. and another v. Col. Y. L. Sud, decided on 1.12.2009, wherein it was opined that the provisions of Order VII Rule 14 CPC are not mandatory as the consequence of non-production/non-filing of document at the time of presentation of plaint has been provided in the Rules. The relevant paras thereof are extracted below:

“16. I have recently in *Aktie Bolaget Volve Vs. R. Venkatachalam* MANU/DE/1690/2009 held with reference to the various provisions of the CPC and the Indian Evidence Act that there is no requirement whatsoever for the parties to file the original documents in the court and the only requirement is for production i.e. giving inspection of the originals to the opposite party, if so required and that too at the stage of admission/denial of documents.

17. Order 7 Rule 14, Sub-rule (3) is as under:

“(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not provided or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.”

The aforesaid provision provides the consequences of non-production/non filing of documents. The only consequence provided is that the plaintiff is barred from proving the documents save with the leave of the court.”

30. Order 7 Rule 11 CPC provides certain circumstances under which a plaint can be rejected. Non-furnishing of document or copy thereof along with the plaint as provided for under Order 7 Rule 14(1) CPC is not one of the reason for rejection of plaint.

31. A plain reading of the provisions of Order 7 Rule 14 CPC shows that consequences of non-production of document and/or the copy

thereof, which has been relied upon in the suit, has not been provided for. In the absence thereof, the provision cannot be said to be mandatory, rather, rigorous thereof has been diluted in Order 7 Rule 14(3) CPC, which provides that in case any document ought to be produced is not produced when the plaint is presented, the same can be produced with the leave of the court subsequently.

32. Hence, the aforesaid question is answered in negative. It is held that merely on non-filing of a document with the plaint at the time of filing of the suit is not fatal as the cure thereof has been given in Order VII Rule 14 (3) CPC.

Question No. 2

33. Order 41 Rule 22 CPC, which deals with the issue, is extracted below:

“22. Upon hearing respondent may object to decree as if he had preferred a separate appeal.- (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the court below in respect of any issue ought to have been in his favour; and may also take cross-objection to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow:

Explanation:- A respondent aggrieved by a finding of the court in the judgment on which the decree appealed against is based may, under this rule, the cross-objection in respect of the decree in so far as it is based on that finding notwithstanding that by reason of the decision of the High Court on any other finding which is sufficient for the decision of the suit, the decree is, wholly or in part, in favour of that respondent.

(2) Form of objection and provisions applicable thereto.-

Such cross- objection shall be in the form of a memorandum,

and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) Omitted by Act 46 of 1999, sec. 31 (w.e.f. 1.7.2002).

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the court thinks fit.

(5) The provisions relating to appeals by indigent person shall, so far as they can be made applicable, apply to an objection under this rule.”

34. A perusal of the aforesaid provision shows that any respondent, who may not have filed appeal against a decree, can not only support the decree but also argue that the findings recorded against him by the court below in respect of certain issues ought to have been in his favour and he may also take any cross objection. The provision further provides that the cross-objections could be filed within one month from the date of service on him or such further time as the appellate court may allow. The cross-objections have the status of an independent appeal. Even if the original appeal is withdrawn or dismissed in default, the cross-objections have to be dealt with independently. All the provisions pertaining to filing of appeal are applicable.

35. The scope of the provisions of Order 41 Rule 22 CPC pre and post amendment carried out in the year 1976 w.e.f. 1.2.1977 was considered by Hon'ble the Supreme Court in Ravinder Kumar Sharma v. State of Assam and others, (1999) 7 SCC 435. In the aforesaid judgment, Hon'ble the Supreme Court referred to Law Commission report leading to the amendment in Order 41 Rule 22 CPC. It was stated that the Law Commission had accepted the correctness of Full Bench judgment of Madras High Court in Gaddem Chinna Venkata Rao v. Koralla Satyanarayanamurthy, AIR 1943 Mad. 698 and Calcutta High Court in Nrisingha Prasad Rakshit v. Commrs. of Bhadreswar Municipality..... that the cross objections were unnecessary in case adverse finding was to be

attacked. The observation of Law Commission was noticed that the words “support the decree” appeared to be strange and “what is meant is that he may support it by asserting that the ground decided against him should have been decided in his favour. It is desirable to make this clear.” The recommendations of the Law Commission, as reflected in the Statement of Objects and Reasons for the amendment, as have been extracted in the aforesaid judgment, are reproduced hereunder:

“Rule 22 [i.e. as it stood before 1976] gives two distinct rights to the respondent in appeal. The first is the right of upholding the decree of the court of first instance on any of the grounds on which that court decided against him; and the second right is that of taking any cross-objection to the decree which the respondent might have taken by way of appeal. In the first case the respondent supports the decree and in the second case he attacks the decree. The language of the rule, however, requires some modification because a person cannot support a decree on a ground decided against him. What is meant is that he may support the decree by asserting that the matters decided against him should have been decided in his favour. The rule is being amended to make it clear.

As explanation is also being added to Rule 22 empowering the respondent to file cross objection in respect to a finding adverse to him notwithstanding that the ultimate decision is wholly or partly in his favour.”

Mookerjee, J. observed in *Nishambhu Jana case* (see p. 689) that “the amended Rule 22 of Order 41 of the Code has not brought any substantial change in the settled principles of law” (i.e. as accepted in Venkata Rao case) and clarified (p. 691) that

“it would be incorrect to hold that the explanation now inserted by Act 104 of 1976 has made it obligatory to file cross-objections even when the respondent supports the decree by

stating that the findings against him in court below in respect of any issue ought to have been in his favour.”

36. Subsequently, the issue was considered by Hon'ble the Supreme Court in Banarsi and others v. Ram Phal, (2003) 9 SCC 606. The relevant paras thereof are extracted below:

“9. Any respondent though he may not have filed an appeal from any part of the decree may still support the decree to the extent to which it is already in his favour by laying challenge to a finding recorded in the impugned judgment against him. Where a plaintiff seeks a decree against the defendant on grounds (A) and (B), any one of the two grounds being enough to entitle the plaintiff to a decree and the court has passed a decree on ground (A) deciding it for the plaintiff while ground (B) has been decided against the plaintiff, in an appeal preferred by the defendant, in spite of the finding on ground (A) being reversed the plaintiff as a respondent can still seek to support the decree by challenging finding on ground (B) and persuade the appellate court to form an opinion that in spite of the finding on ground (A) being reversed to the benefit of defendant-appellant, the decree could still be sustained by reversing the finding on ground (B) though the plaintiff-respondent has neither preferred an appeal of his own nor taken any cross objection. A right to file cross objection is the exercise of right to appeal though in a different form. It was observed in *Sahadu Gangaram Bhagade v. Special Deputy Collector, Ahmednagar and Anr.*, (1971) 1 SCR 146, that the right given to a respondent in an appeal to file cross objection is a right given to the same extent as is a right of appeal to lay challenge to the impugned decree if he can be said to be aggrieved thereby. Taking any cross objection is the exercise of right of appeal and taken the place of cross appeal though the form differs. Thus it is clear that just as an appeal is preferred by a person aggrieved by the decree so also a cross objection is

preferred by one who can be said to be aggrieved by the decree. A party who has fully succeeded in the suit can and needs to neither prefer an appeal nor take any cross objection though certain finding may be against him. Appeal and cross objection-both are filed against decree and not against judgment and certainly not against any finding recorded in a judgment. This was well-settled position of law under the unamended Civil Procedure Code.

10. Civil Procedure Code Amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22 sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross objection against a finding. The difference which has resulted we will shortly state. A respondent may defend himself without filing any cross objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree he must take cross objection. The amendment inserted by 1976 amendment is clarification and also enabling and this may be made precise by analysing the provision. There may be three situations:-

- (i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent.
- (ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent.
- (iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.

11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross objection against that part of the

decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross objection. The law remains so post amendment too. In the type of cases (ii) and (iii) pre-amendment Civil Procedure Code did not entitle nor permit the respondent to take any cross objection as he was not the person aggrieved by the decree. Under the amended Civil Procedure Code, read in the light of the explanation, though it is still not necessary for the respondent to take any cross objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross objection to a finding recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross objection is spelled out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default the cross objection taken to any finding by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any finding recorded against the respondent.

12. The fact remains that to the extent to which the decree is against the respondent and he wishes to get rid of it he should have either filed an appeal of his own or taken cross objection failing which the decree to that extent cannot be insisted on by the respondent for being interfered, set aside or modified to his advantage. The law continues to remain so post- 1976 amendment. In a suit seeking specific performance of an agreement to sell governed by the provisions of the Specific

Relief Act, 1963 the court has a discretion to decree specific performance of the agreement. The plaintiff may also claim compensation money or deposit paid or made by him in case his claim for specific performance is refused. No compensation or any other relief including the relief or refund shall be granted by the court unless it has been specifically claimed in the plaint by the plaintiff. Certainly the relief of specific performance is a larger relief for the plaintiff and more onerous to the defendant compared with the relief for compensation or refund of money. The relief of compensation or refund of money is a relief smaller than the relief of specific performance. A plaintiff who files a suit for specific performance claiming compensation in lieu of or in addition to the relief of specific performance or any other relief including the refund of any money has a right to file an appeal against the original decree if the relief of specific performance is refused and other relief is granted. The plaintiff would be a person aggrieved by the decree in spite of one of the alternative reliefs having been allowed to him because what has been allowed to him is the smaller relief and the larger relief has been denied to him. A defendant against whom a suit for specific performance has been decreed may file an appeal seeking relief of specific performance being denied to the plaintiff and instead a decree of smaller relief such as that of compensation or refund of money or any other relief having been granted to the plaintiff for the former is larger relief and the latter is smaller relief. The defendant would be the person aggrieved to that extent. It follows as a necessary corollary from the above said statement of law that in an appeal filed by the defendant laying challenge to the relief of compensation or refund of money or any other relief while decree for specific performance was denied to the plaintiff, the plaintiff as a respondent cannot seek the relief of specific performance of contract or modification of the impugned decree except by

filing an appeal of his own or by taking cross objection.”

37. In the aforesaid judgment, Hon'ble the Supreme Court has carved out three categories to define the situations where cross objections are required to be filed and where issue could be raised without filing cross objections, namely,

(i) where the impugned decree is partly in favour of the appellant and partly in favour of the respondent in an appeal, it is necessary for the respondent either to file appeal or take cross objections against that part of the decree, which is against him, however, he is entitled to support part of the decree in his favour without filing cross objections;

(ii) in the cases where a decree is entirely in favour of the respondent though an issue has been decided against the respondent and

(iii) where a decree is entirely in favour of the respondent as all the issues have been answered in his favour but there is a finding in the impugned judgment which goes against the respondent.

38. It was opined that in type of case (i), it was necessary for the respondent in an appeal to file an appeal or take cross-objection against that part of the decree, which is against him if he seeks to get rid of the same, though part of the decree, which is in his favour, he is entitled to support without taking any cross-objection. The law pre or post 1976 amendment is same.

39. In the type of cases (ii) and (iii) pre-amendment Civil Procedure Code did not entitle nor permit the respondent to take any cross objection as he was not the person aggrieved by the decree. Under the amended Civil Procedure Code, read in the light of the explanation, though it is still not necessary for the respondent to take any cross objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross objection to a finding recorded

against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross objection has been spelled in sub-rule (4). It was opined therein that to the extent a decree is against the respondent in an appeal and he wishes to get rid of that, the only course is either to file appeal of his own or take cross objection, failing which the decree to that extent cannot be insisted on by the respondent for being interfered with, set aside or modified to his advantage.

40. In the case in hand, the suit filed by the respondent-plaintiff was partly decreed, namely, instead of specific performance of agreement to sell, refund of earnest money was granted. The decree as such was partly against the appellant-defendant, hence to challenge the part of the decree against her, she was required to either file appeal or take cross-objections. That issue cannot be permitted to be raised without availing any of the aforesaid remedy.

41. As far as the cross objections filed by the appellant before the learned lower appellate court are concerned, even though the cross-objections by the appellant were filed belatedly but still considering the circumstances of the case, where from the very beginning, she had been denying execution of agreement of sell and contesting the case on that issue, in my opinion, the delay in filing the cross objections deserves to be condoned, hence, order of the learned lower appellate court to that extent is set aside.

Question No. 3

42. Order XIII provides for production, impounding and return of documents. Prior to amendment in 2002, w.e.f. 1.7.2002, it provided that the parties to the suit shall produce on or before the settlement of the issues, the documentary evidence in their possession on which they intend to rely, which had not been already filed in Court and all other documents which the Court had ordered to be produced. The Court shall receive the documents so produced which should be accompanied by an accurate list prepared in terms of the High Court Rules and Orders.

Order XIII Rule 1 of the CPC is extracted below:

“ ORDER XIII

PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS

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.”

43. After the amendment in 2002, Order XIII Rule 1 provides that the parties or their pleaders shall produce on or before the settlement of the issues all the documentary evidence 'in original', where the copy thereof had been filed along with the plaint or written statement. The Court shall receive the documents so produced which should be accompanied by an accurate list prepared in terms of the High Court Rules and Orders. Prior to amendment of 2002, Rule 2 provided that any documentary evidence not produced in terms of Rule 1 shall not be received at any subsequent stage without permission of the Court. The aforesaid Rule was deleted vide 2002 amendment. Solution was provided in Order VII Rule 14 (3) CPC.

44. Rule 3 enables the Court to reject any document which is considered irrelevant or otherwise inadmissible after recording the reasons for such rejection. Rule 4 provides that on the documents which have been admitted in evidence, certain endorsements have to be made, such as:

- (a) the number and title of the suit;
- (b) the name of the person producing the document;
- (c) the date on which it was produced, and
- (d) a statement of its having been so admitted.

45. The aforesaid endorsements have to be signed or initialed by the judge. Where the document so admitted is an entry in the book, account or record and a copy whereof has been permitted to be placed on record, such an endorsement shall be made on the copy thereof. The endorsement as is envisaged in Order XIII Rule 4 is also to be made on the document rejected as inadmissible in evidence.

46. Rule 7 provides that every document which has been admitted in evidence or a copy thereof where a copy has been permitted to be substituted shall form part of the record, whereas the documents not admitted in evidence shall not form part of the record and shall be returned to the person producing them.

47. Rule 8 entitles the Court to impound any document for sufficient reasons.

48. Rule 9 entitles any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit, to receive back the same unless the same has been impounded under Rule 8. Besides the stages prescribed, it has been provided that a document can be returned to the persons applying for, on submission of a certified copy thereof to be substituted for the original or a copy prepared and compared in terms of Order VII Rule 17 (2) CPC with an undertaking to produce the original, if required.

49. Rule 2 was deleted, whereas there is no change in Rules 3 to 9 in Order XIII after the 2002 amendment.

50. Substantive changes in the Order XIII after the 2002 amendment clearly suggest that before framing of issues, the parties are required to produce before the Court the original of the document sought to be relied upon in evidence, the copy whereof had been filed along with the plaint or written statement and the Court is to receive the document so produced. Meaning thereby before the settlement of the issues, the parties are required to produce and submit the original of the documents sought to be relied in evidence.

51. In fact, the amendment carried out in Order XIII Rule 1 which uses the words 'original documents' is **clarificatory** in nature, if read in the

light of other Rules in Order XIII, which were existing even prior to the amendment in 2002. Rule 3 provides for rejection of irrelevant or inadmissible documents. The relevancy or admissibility of a document is not possible on a photo copy thereof. Rule 4 provides for endorsement on documents admitted in evidence. As per Indian Evidence Act, 1872, certain documents are per se admissible in evidence. In my opinion, the aforesaid Rule provides for admission of certain documents in evidence which are either per se admissible in terms of provisions of the Evidence Act or otherwise admitted by the parties to the litigation to be correct. The documents so admitted in evidence have to be endorsed with the following particulars:-

- (a) the number and title of the suit;
- (b) the name of the person producing the document;
- (c) the date on which it was produced, and
- (d) a statement of its having been so admitted.

The aforesaid endorsements have to be signed or initialed by a Judge.

52. As is experienced in Courts below any document admitted in evidence is not found to be containing the aforesaid endorsements. The Courts below should follow the procedure prescribed in CPC which has certain objective to achieve.

53. The endorsement of admission in evidence on a copy of the document is only with reference to an entry in the book or account or record, the copy of which had been prepared and compared to be true copy. Endorsement is required to be made even on the documents which are rejected as inadmissible in evidence (Rule 6). Every document which has been admitted in evidence or a copy as envisaged in Order XIII Rule 5, shall form part of the record of the suit, whereas the document not admitted shall not form part of the record and are to be returned to the persons producing them.

54. Rule 8 empowers the Court to impound a document or a book produced before the Court for sufficient reasons. Impounding can only be of an original. Besides other good reasons, one of the reason can be that a

document produced before the Court is not properly stamped. In Hariom Agrawal v. Prakash Chand Malviya, AIR 2008 SC 166, Hon'ble the Supreme Court opined that the impounding by the Court can be only of an original document.

55. Rule 9 provides that any party producing a document and desirous of receiving the same back can do so with permission of the Court unless the document has been impounded. Besides prescribing the stages, it has been envisaged in the aforesaid Rule that the party concerned shall produce in Court a certified copy thereof or a copy prepared, examined, compared and certified in the manner prescribed in Order VII Rule 17 (2) CPC, with an undertaking to produce the original thereof as and when required.

56. A reading of the aforesaid Rule, which existed even prior to 2002 amendment clearly shows that the word 'document' has been used with reference to the original and not a 'copy' thereof as is said to be suggested by learned counsel for the respondent.

57. No doubt, production and filing are two different concepts. Production would mean production in Court or before any authority not for retention but filing means submission thereof in the Court or with the authority. Under Order XIII, besides production of original of the documents, the documents so produced were to be filed in Court. Only the word 'original' has been added with the amendment in 2002. otherwise production and submission in Court of any documentary evidence was provided for even in un-amended provisions.

58. Wherever a party is required to produce a document in Court and / or is not required to submit a copy of same, it is the duty of the Court to so record in the zimni order that the document was produced and perused by the Court and returned with an identification mark thereon. Production of original document in the Court is also required for the reason that there is no chance of tempering with the document in terms of the pleadings of the parties, at a later stage.

59. In the case in hand, suit for permanent injunction was filed on 13.2.2001 on the basis of an alleged agreement to sell executed by vendor in

favour of the vendee. Application for amendment to seek the relief for specific performance of the alleged agreement to sell was filed on 3.5.2002. The same was allowed by the Court on 28.8.2002. Thereafter, the case was listed for filing of the amended plaint on 9.9.2002. On 3.10.2002, the Court noticed that the court fee required for seeking the relief of specific performance had been paid and the amended plaint was already on record. The CPC was amended with effect from 1.7.2002 and amended plaint was to be filed thereafter, Hence, the respondent-plaintiff was required to comply with the amended provisions requiring production and filing of a document and copy thereof with the plaint. The plaintiff only filed a photo copy of the document with the plaint. However, the same is not fatal. The issues in the present case were framed on 3.3.2003. By that time, the CPC had already been amended with effect from 1.7.2002. The amended provisions of Order XIII Rule 1 required production and filing of documentary evidence in original in Court before framing of the issues. The plaintiff in the present case did not comply with the aforesaid requirement. In terms of provisions of Order VII Rule 14 (3), in case of non-compliance of Order VII Rule 14 (1), no document could be produced in evidence, if not filed along with the plaint or otherwise, without permission of the Court which could be granted for reasons to be recorded. Admittedly, the plaintiff did not seek permission of the Court to produce the document.

60. In the case as stands, the suit is based on agreement to sell dated 19.10.2000. The original of that is not on record with the court. Even though opinion of the expert has been produced showing that signatures on the agreement to sell tally with the admitted signatures of the appellant, but even specimen of signatures of the appellant on the questioned document were not taken from any original document submitted in court but it is claimed that the same were allegedly taken from the original of the document in possession of the respondent, which does not inspire confidence. The process certainly prejudices the appellant, even if the objection was not raised by the appellant. It is the duty of the court that truth in a case comes out. Hon'ble the Supreme Court opined that entire journey of a judge is to discern the truth, which alone is the foundation of justice.

Every trial is a voyage of discovery in which truth is the quest. The following paragraphs from A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalani Sangam represented by its President etc., (2012) 6 SCC 430, which are relevant on the issue, are extracted below:

“ENTIRE JOURNEY OF A JUDGE IS TO DISCERN THE TRUTH:

24. The entire journey of a judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of justice delivery system. This Court in *Dalip Singh v. State of U. P. and Ors.* MANU/SC/1886/2009: (2010) 2 SCC 114 observed that truth constitutes an integral part of the justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system.

25. This Court in *Maria Margarida Sequeria Fernandes and others v. Erasmo Jack de Sequeria (Dead) through L.Rs.*, (2012) 3 SCALE 550 had an occasion to deal with the same aspect. According to us, observations in paragraphs 31 to 52 are absolutely germane as these paragraphs deal with relevant cases which have enormous bearing on the facts of this case, so these paragraphs are reproduced hereunder:

“31. In this unfortunate litigation, the Court's serious endeavour has to be to find out where in fact the truth lies. The truth should be the guiding star in the entire judicial process.

32. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty.

33. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.

34. In *Mohanlal Shamji Soni v. Union of India* MANU/SC/0318/1991: 1991 Supp (1) SCC 271, this Court observed that in such a situation a question that arises for consideration is whether the presiding officer of a court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice? It is a well accepted and settled principle that a Court must discharge its statutory functions-whether discretionary or obligatory-according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done.

35. What people expect is that the Court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.

36. In *Ritesh Tewari and Anr. v. State of Uttar Pradesh and Ors.* MANU/SC/0742/2010: (2010) 10 SCC 677 this Court reproduced often quoted quotation which reads as under:

“Every trial is a voyage of discovery in which truth is the quest.”

37. This Court observed that the power is to be

exercised with an object to subserve the cause of justice and public interest and for getting the evidence in aid of a just decision and to uphold the truth.

38. Lord Denning, in the case of *Jones v. National Coal Board* (1957) 2 QB 55 has observed that:

In the system of trial that we evolved in this country, the Judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of the society at large, as happens, we believe, in some foreign countries.

39. Certainly, the above, is not true of the Indian Judicial System. A judge in the Indian System has to be regarded as failing to exercise his jurisdiction and thereby discharging his judicial duty, if in the guise of remaining neutral, he opts to remain passive to the proceedings before him. He has to always keep in mind that “every trial is a voyage of discovery in which truth is the quest.” In order to bring on record the relevant fact, he has to play an active role; no doubt within the bounds of the statutorily defined procedural law.

40. Lord Denning further observed that in the said case of *Jones* (supra) that “It's all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth.”

61. Considering the findings recorded on various issues, as above, in my opinion, ends of justice in the present case will be met if the matter is remanded back to the trial court for *de novo* trial after affording opportunity to both the parties.

62. Hence, the judgments and decrees of both the courts below are set aside. The parties through their counsels are directed to appear before the court below on 9.2.2015 for further proceedings.

(Rajesh Bindal)
Judge

January 19, 2015
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(Refer to Reporter)