

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.3652 of 2016
and CMP.No.18580 of 2016

M.Rajendra Rao

.. Petitioner/Tenant

Vs.

Vetri Selvi Suresh

.. Respondent/Landlady

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 03.08.2016 in M.P.No.82 of 2016 in R.C.O.P.No.905 of 2015 on the file of the learned XIV Judge, Court of Small Causes, Madras.

For Petitioner : Mr.K.Bijai Sundar

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 03.08.2016 in M.P.No.82 of 2016 in R.C.O.P.No.905 of 2015 on the file of the learned XIV Judge, Court of Small Causes, Madras.

2.Learned counsel for the petitioner would submit that the respondent as a landlady filed an application for eviction on the ground of wilful default. The petitioner herein, who is the tenant, has filed a counter and contested the same. During trial, the respondent/landlady has filed a proof affidavit for evidence. But the averments made in the proof affidavit have not been pleaded in the main eviction petition. Therefore, the petitioner/tenant has filed a petition in M.P.No.82 of 2016 to eschew the proof affidavit filed by the respondent/landlady on the ground that without pleadings, no evidence can be looked into and no one is permitted to adduce evidence without pleadings. He has also relied upon the decision reported in 2008 5 CTC page No.577. The trial Court, after hearing both sides, dismissed the petition. Therefore, he prays for setting aside the impugned order passed by the trial Court. To substantiate his arguments, he relied upon the following decisions:

(i)CDJ 2006 Kerala HC 452 (Dr.K.K.Johny v. K.P.James and another);

(ii) Appeal (Civil) 9130 of 2003 (Ameer Trading Corporation Ltd., Shapoorji Data Processing Ltd.,)

3.At the time of admission, argument of the learned counsel for the petitioner is heard in length.

4.A perusal of the typed set of papers reveals that the respondent herein as a landlady filed a petition in R.C.O.P.No.905 of 2015 for eviction on the ground of wilful default. The tenant/petitioner herein has also filed a counter and contested the same. During trial, the respondent has filed a proof affidavit for evidence. According to the petitioner, the averments made in the proof affidavit have not been pleaded in the main eviction petition. Therefore, he has filed a petition in M.P.No.82 of 2016 for eschewing the proof affidavit, for which, he has given the following schedule indicating that what are the portions have to be eschewed from the proof affidavit:

“I.At para 3 of the proof affidavit “and thereafter willfully not paid the monthly rent from 01.01.2014 till 31.03.2015, despite my repeated demand in person and hence the allegation of the respondent that I have not made any demand for rent is not correct and denied as false”.

II. Entire averments made in paragraph 4 of the proof affidavit do not find a place in the petition filed in the main R.C.O.P.

III. At para 5 of the proof affidavit “in person from the respondent alone from other tenants paying the rents by cheques”.

IV.At para 7 of the proof affidavit “but

evaded to receive the notice and failed to comply the same”.

V.All the averments contained from paragraphs 8 to 18 of the proof affidavit do not find a place in the petition filed in the main R.C.O.P. except for the reference made to legal notice dated 26.04.2015.”

5.Now this Court has to consider the decision relied upon by the learned counsel for the petitioner reported in ***CDJ 2006 Kerala HC 452 (Dr.K.K.Johny v. K.P.James and another)***, wherein para-6 and 7, it is held as follows:

“6.Under the amended Order 18, significant, qualitative and revolutionary changes have been introduced in the trial of cases before the Courts. It is not invariably necessary any more to examine all the witnesses in chief examination before Court. Affidavits can be accepted in evidence. The amendment has the obvious intention of expediting the trial before Courts. The logic and the spirit of the amendment have got to be imbibed by the law fraternity including Judges and lawyers. Otherwise the amendments will remain on paper only and the intended objective will not be achieved. This Court had occasion to consider the manner in which a proof affidavit has to be filed and the procedure which

can/ought to be followed in the decision in reported in *Palode Ravi v. Mangode Radhakrishnan* (2002(3) KLT 557). In a later decision reported in *Safiya v. Mammu* (2005 (4) KLT 223) also there was reference to these aspects. It is unnecessary to advert to these aspects any further detail. But certainly the following principles have got to be followed by all Courts. I need only reiterate the settled law for guidance:

(i) The chief affidavit must invariably be in the language of the witness. This will help to avoid the embarrassing situation confronted by many Courts these days of the witness/deponent in cross-examination feigning ignorance of what is stated in chief-examination in an alien language.

(ii) While preparing the chief affidavit, counsel have got a duty as officer of Court to ensure that only legally admissible materials-oral or documentary, are introduced. This certainly is the obligation of the Bar to make the amendments effective and be of use in the cause of expediting trial.

(iii) Before commencement of cross-examination, the chief affidavit, must be read in Court and the affirmation of the deponent obtained – again to avoid any controversy.

(iv) While the chief affidavit is so read, the Court must rule on the objections, if any raised by the adversary. It must be ruled whether objections are sustainable and whether a document/piece of oral

evidence is admitted, not admitted or admitted subject to objections. In the light of the decision reported in *Bipin Shantilal Panchal v. State of Gujarat* (AIR 2001 SC 1158) we are to give up what is referred to as "archaic procedure" of rendering rulings on admission at the time when the documents are sought to be marked. It is possible now to admit a document tentatively reserving ruling on admissibility to a later stage. In the light of the decision of the Supreme Court in *Bipin Shantilal Panchal v. State of Gujarat* (AIR 2001 SC 1158), there can be no doubt on that aspect any more.

(v) The cross-examination is to commence only after the rulings are so given on the objections and the documents that are marked are categorized as admitted, not admitted or admitted subject to objection.

(vi) Even when a ruling is given that any particular exhibit is not admitted, it will be inexpedient to attempt renumbering of all the documents in fresh sequential order. In that case the ruling need only say that the particular exhibit is inadmissible and shall be excluded from evidence. Appendix need only show that the said exhibit is "not admitted vide ruling dated". After that ruling no reference shall be permitted to that document. It must be deemed to have been not introduced into evidence at all. This I say because I find some Courts dissipating their time and energies to renumber

documents afresh after such exclusion.

7.I am unable to understand the decision of the Supreme Court in Bipin Shantilal Panchal as absolving the trial Judge of the obligation in all cases to render a ruling on the question of admissibility. Uncertainty ought to be avoided in for the contestants. If a document is on the face of it and clearly admissible or inadmissible, the Court need not and should not hesitate to straightaway give a ruling on that aspect. Only when the dispute about admissibility raised by a contestant possess problems warranting detailed arguments and decision, need the Court postpone the decision on such objections. A ritualistic and myopic understanding of the dictum would leave the Courts with all sorts of unnecessary inadmissible materials vexatiously introduced into evidence. Taking advantage of the ruling white paper or unattested xerox copies which are not admissible at all may be stealthily introduced into evidence making it difficult later on to separate the admissible from the inadmissible and leaving it uncertain to the parties as to what evidence has really come in and what had not come in. I say so only to clarify that the observations in paras-12 and 13 of Bipin Shantilal Panchal v. State of Gujarat (supra) should not be understood to mean that no ruling need or can ever be given hereafter on the objections raised as and when they are raised. It cannot be lost sight of that the Supreme Court's observations are intended to

expedite trial and to avoid the possibility of remand. That is no licence to a party to introduce into evidence all inadmissible material in the hope that till ruling is given ultimately the records can be permitted to swell and the issue confused."

But the above decision is not applicable to the facts of the present case.

6.As per the dictum of the Apex Court reported in ***AIR 2001 SC 1158 (Bipin Shantilal Panchal v. State of Gujarat and another)***, a document can be marked subject to objection and at the time of delivering judgment, admissibility can be decided. The above judgment is rendered in criminal proceedings, not in a civil dispute. Therefore, the decision relied upon by the counsel for the petitioner in ***CDJ 2006 Kerala HC 452 (Dr.K.K.Johny v. K.P.James and another)*** is not applicable to the facts of the present case.

7.Now this Court has to decide whether the petitioner is permitted to eschew the portions mentioned in the schedule. In the decision relied upon by the learned counsel for the petitioner reported in ***Appeal (Civil) 9130 of 2003 (Ameer Trading Corporation Ltd., Shapoorji Data Processing Ltd.,)***, it is held as follows:

".. .. If any objection is taken to any statement made in the affidavit, as for example, that a statement has been made beyond the pleadings, such an objection can always be taken before the Court in writing and in any event, the attention of the witness can always be drawn while cross-examination him. The defendant would not be prejudiced in any manner whatsoever the examination-in-chief is taken on an affidavit and in the event, he desires to cross-examine the said witness he would be permitted to do so in the open court. There may be cases where a party may not feel the necessity of cross-examining a witness, examined on behalf of the other side. The time of the court would not be wasted in examining such witness in open court. "

There is no quarrel over the above proposition. The petitioner has every right to cross-examine the witness on the basis of proof affidavit. It is well settled dictum of the Apex Court that no evidence can be let in, without pleadings. Moreover, the evidence need not be pleaded in the petition and the pleadings must be gist.

8.Clause (I) of the schedule is concerned, the petitioner wants to eschew "and thereafter willfully not paid the monthly rent from 01.01.2014 till 31.03.2015, despite my repeated demand in

person and hence the allegation of the respondent that I have not made any demand for rent is not correct and denied as false". Admittedly, the respondent has filed the petition for eviction on the ground of wilful default in payments. Therefore, averments in clause (I) need not be eschewed.

9.Considering the entire portions in the schedule, I am of the view that the petitioner has every to cross-examine the witness. Further, the averments made in the proof affidavit will be testified by way of cross-examination. As already stated that evidence need not be pleaded in the plaint. On perusing the proof affidavit, I do not find any evidence contrary to the pleadings. If the Rent Controller finds that the proof affidavit is contrary to the pleadings, it can be considered only at the time of pronouncing order that too after considering the proof affidavit and cross-examination on this point. The proof affidavit filed by the respondent shows that as to how the petitioner/tenant committed the wilful default in payment of rent.

10.In view of the aforestated circumstances of the case, I am of the view that the pleadings is not a bundle of evidence and the evidence need not be pleaded in the plaint. Therefore, the Civil Revision Petition is dismissed in a different point that evidence need

not be pleaded in the plaint and proof affidavit is not contrary to the pleadings. No costs. Consequently, connected Miscellaneous Petition is closed.

05.12.2016

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Index:Yes/No
To

XIV Judge, Court of Small Causes, Madras.

R.MALA,J.

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