

CIVIL REVISION PETITION No.287 of 2015

ORDER:

The plaintiff in a suit for recovery of a secured mortgage debt based on a registered document, maintained O.S.No.57 of 2010 against the sole defendant, who is contesting by disputing the very execution of the registered mortgage debt and borrowing the amount and liability of him there under and the case while under trial for any necessity of passing a preliminary decree or dismissal of the claim on merits, parties are put to trial from the issues settled after hearing and it is at that stage defendant filed I.A.No.641 of 2014 seeking to permit to exhibit Xerox copy of the partnership deed dated 25.07.2007 as secondary evidence. The application was allowed after contest and impugning the same, present revision is filed.

2. The affidavit petition in I.A.No.641 of 2014 filed by the defendant is with the averments that he filed chief examination affidavit to receive the same as DW.1 chief and while choosing to mark the documents the Xerox copy of the partnership deed dated 25.07.2007 filed stating that the original is with the plaintiff and even he issued notice to produce under Order 12 Rule 8 C.P.C. The plaintiff denied the same, though a perusal of cross examination of PW.1 discloses existence of the partnership deed. While denying custody he is intentionally avoiding to submit the document before the Court. Thereby he is advised to file the petition to permit to mark the Xerox copy as secondary evidence. Xerox copy is of the alleged partnership deed dated 25.07.2007 (unregistered). The defence of the defendant from the written statement is not that the original is with the plaintiff but for saying there was a partnership to carry on business w.e.f. 25.07.2007 entered with the name and style of M/s.Rock Star Quarry. It is the defence of the defendant in the suit that under the guise of entering into the partnership having lured by the plaintiff came along with one A.Mallesha and taken his pattadar passbook, title deed, some other documents and also signed blank papers, with any of which the plaintiff might have been created the alleged mortgage, as if executed by

him, in maintaining the suit. Needless to say but for in this context same is referred above, from this it no way prejudice the rights of any of the parties. It is a registered mortgage deed and there is no specific denial of he did not go to the Registrar office and he did not participate in the registration apart from signature not specifically in dispute in the deed but for saying might have been created on blank signed papers. Nothing more is required for the purpose of revision petition to go into the pleadings of the parties.

3. The so called Xerox copy of the partnership deed dated 25.07.2007 is already on record. It is not an application to receive the same by condoning the delay. It is a document the defendant wants to rely which is only a Xerox copy he says he already issued notice to produce as per Order 12 Rule 8 CPC, leaving about no further application even filed Rule 14 CPC that no way mandatorily required under Order 11. In fact even from reading of Order 7 Rule 14(4) CPC a defendant who wants to rely on a document even not exhibited and not filed with any petition to receive, entitled to confront the opposite party by drawing the attention including to refresh his memory to the contents as contemplated by Sections 145, 155(3) and 159 of the Evidence Act, the defendant is having the opportunity to cross examine. If at all the defendant wants to rely there from, he has to make a foundation to the existence of the original to adduce secondary evidence as contemplated by Sections 65 and 66 of the Evidence Act. One of his say is that he laid the foundation saying he issued a notice to produce and it is his version that he mentioned the same in the written statement about the partnership deed. In fact as referred supra the written statement did not speak about the original is with plaintiff and Xerox copy given to him, but for entering of the partnership. In the application before lower Court seeking to permit to exhibit in DW1's evidence the Xerox copy of the partnership deed from his saying original is with the plaintiff and he already issued notice to produce for which plaintiff denies the existence. The defendant placed reliance on **Koneru Srinivas v. Smt. G.Sarala Kumari**^[1], wherein it was observed that existence of Xerox copy of the original agreement was not in dispute, the Xerox copy claims to be marked, the other aspects as to the evidentiary value to be decided

ultimately during hearing after trial or during trial and it can be marked subject to objection and the application filed to receive could not have been dismissed. There on factual matrix there was no dispute about existence of the original agreement, whereas herein there is a dispute about the existence of original partnership deed. Thereby that decision though placed reliance before the trial Court, it has no application to the facts on hand, that was not properly appreciated by the trial Court.

4. However, the law is fairly settled from the Apex Court's expression in **Bipin Shantilal Panchal vs State of Gujarat**^[2] that any objection while marking as to admissibility, relevancy etc., other than on stamp duty and registration, no way required to be decided instantaneously but for left open by marking subject to said objections to decide on the final hearing rather than adopting the archaic practice of deciding the objection instantaneously and allowing the parties to maintain revision and giving life to the litigation in directing all the Courts to follow the said procedure. Once such is the case from law of the land to bind all the Courts to follow, what the Court observed of any objection is left open to decide ultimately no way requires interference but for the plaintiff is not automatically be entitled to be adduced secondary evidence with any specific permission of the Court. However, whether he is entitled to adduce secondary evidence which he wanted to exhibit or not be subject to objection on its admissibility as a secondary evidence even to decide ultimately by the Court from the principle laid down therein. It is because once objection is not raised while marking regarding the secondary evidence, as it is part of the procedure and for objection not raised tantamount to waiver and cannot raise later as any such document as secondary evidence when marked not objected is as good as original, as laid down in [R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple & Anr.](#)^[3] and **Dayamathi Bai (Smt) Vs. K.M. Shaffi**^[4]. Here, the plaintiff wanted to raise objection and he is raising objection. Thus the only course open to the trial Court is to mark the same subject to the objection including on admissibility and relevancy to be decided by the Court under Section 136 of the Evidence Act only ultimately and not

instantaneously while exhibiting.

5. Subject to the above observations, this Civil Revision Petition is disposed of. No costs.
6. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:08-08-2016
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[1]

2013(1) ALT 1

[2]

2002(10) SCC 529

[3]

2003(8) SCC 752

[4]

(2004) 7 SCC 107