

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3558 OF 2016

ORDER:

This revision, under Article 227 of the Constitution of India, is filed challenging the Order dated 07.06.2016 in I.A.(Sr) No.1840 of 2016 in O.S. No.269 of 2008 filed under Rule 3 of Order XIII read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'CPC'), whereby the petition was rejected on different grounds.

02. The petitioner filed a petition under Rule 3 of Order XIII read with Section 151 of CPC to reject the documents, which were marked as Exs.A.1, 2, 6, 8 to 10 in the suit, as they are inadmissible in evidence. The trial court rejected the said petition in so far as Exs.A.1, 2, 6, 8 to 10 and directed to number the petition in so far as Ex.A.1, assigning its own reasons and the same is now under challenge before this Court.

03. During hearing, Smt. Manjari S. Ganu, learned counsel appearing for the revision petitioner, would contend that objection in respect of admissibility of documents can be raised at any stage and placed reliance on the Judgment of the Apex Court in **R.V.E.VENKATACHALA GOUNDER v. ARILMIGU VISWESWARASWAMI & V.P. TEMPLE AND ANOTHER¹**. At paragraph 20 of the said Judgment, it was held that ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into

¹ (2003) 8 SCC 752

two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit.

04. There is no dispute regarding the law declared by the Apex Court regarding the remedy available to the petitioner under Rule 3 of Order XIII of CPC to challenge the admissibility of the document.

05. But in **BIPIN SHANTILAL PANCHAL V. STATE OF GUJARAT AND ANOTHER²** while considering the necessity of speedy trial in a criminal case held as follows:

“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

² AIR 2001 SC 1158

- 3 -

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.”

06. In the present facts of the case, the admissibility of the documents-Exs.A.2, 6, 8 to 10 is challenged not on the ground of insufficiency of stamp duty paid on the documents, but on the other grounds. In such case, the trial court can be directed to follow the principle laid down in **BIPIN SHANTILAL PANCHAL**'s case referred to supra.

07. Hence, applying the principle laid down in **BIPIN SHANTILAL PANCHAL**'s case referred to supra, the trial court is directed to note down the objections regarding the admissibility of Exs.A.2, 6, 8 to 10 and postpone the Order on their admissibility and decide, according to law, at the end of trial.

08. With the above direction, the revision petition is disposed of. No costs.

09. Miscellaneous petitions, if any, pending in this revision petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 08.09.2016
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