

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P. No.3917 OF 2016

ORDER:

Heard Mr.C.Prakash Reddy for revision petitioners and Mr.Virupaksha Dattatreya Gouda for respondent.

Defendants in O.S.No.56 of 2014 in the Court of Senior Civil Judge, Atmakur are the revision petitioners. The revision is directed against the order in I.A.No.172 of 2016 dated 18.07.2016. The Impugned order in the revision is very brief and reads thus:

“I.A.No.172/16 is allowed. Accordingly, the word “not” is added after the portion of sentence “The writing present in Ex.B1 calculation sheet is” in the impugned sentence “The writing present in Ex.B1 calculation sheet is that of mine. Call on 19.07.2016”

The circumstances relevant for the disposal of the revision are as follows:

The respondent filed O.S.No.56 of 2014 to recover Rs.2,61,120/- from the revision petitioners herein. The revision petitioners as legal representatives of debtor late Kunduru Sva Reddy are arrayed as parties to the suit. The suit is based on promissory notes dated 22.08.2012 said to have been executed by late Kunduru Sva Reddy. The revision petitioners filed written statement and are contesting the suit in all fours. On 05.06.2015, the chief affidavit of P.W.1/respondent under Order XVIII Rule 4 of Code of Civil Procedure (CPC) was affirmed. On 27.11.2013, the

respondent entered the witness box, chief affidavit was taken on file and Exs.A.1 to A.19 were marked. On 02.12.2015, 08.12.2015 and 09.12.2015, the respondent was cross examined and his evidence was recorded and closed as prescribed by Order XVIII Rule 4 of CPC. On 06.06.2016, the respondent filed I.A. No.172 of 2016 under Order XVIII Rule 16 (3) read with Section 151 CPC and the prayer in the instant I.A. reads thus:

“For the reasons stated in the accompanying affidavit, it is therefore prayed that the Hon’ble Court may be pleased to correct schedule mentioned item No.1 statement occurred in the deposition of PW1, as per Or.18, rule 16(3) read with under sec.151 C.P.C. as the Hon’ble court has got ample power to rectify the mistakes that was crept in as shown in the item No.2 of Schedule, in the interest of justice.

Schedule:

I. PW1- Deposition-Cross Examination dt: 08-12-2015
(Page 2 of cross examination) Line:4th line from bottom;

The writing present in Ex.B1 calculation sheet is that of mine.

II. The proposed correction -

The writing present in Ex.B1 calculation sheet is not that of mine.”

The revision petitioners opposed these prayers.

The trial Court through the order impugned in the C.R.P. allowed I.A. No.172 of 2016. Hence, the revision.

At the outset, it is to be remarked that the order impugned in the revision is not a speaking order and the reasons stated by the learned Judge are too succinct and the order does not also convey what the trial Court intended to permit P.W.1/respondent by allowing this application. On this ground alone, the order impugned in the revision could be set aside, but learned counsel

appearing for the parties have addressed arguments on the jurisdiction, scope and power of Court on the one hand to correct the evidence recorded by the Court and on the other that the Court does not have power to correct evidence recorded in the open Court signed by the party and thereafter certified by the Judge recording the evidence. Hence, the prayer in I.A.No.172 of 2016 is on merits and is considered by this Court from the material available on record.

Mr. C.Prakash Reddy for revision petitioners contends that the prayer in I.A. No.172 of 2016 is completely an afterthought and the chronology of events from 05.06.2016 till 09.12.2015 would go to show that the instant application is filed only to erase impact of admission allegedly given by P.W.1/respondent on Ex.B.1 calculation memo relied upon by the revision petitioners. He contends that Order XVIII Rule 16 of CPC has no application, much less Section 151 has conferred jurisdiction on the trial Court to correct the evidence recorded in the presence of counsel, signed by a party and certified by the Court. He further contends that if the prayer for amendment of evidence recorded in the open Court is accepted, the same amounts to treating evidence on par with pleadings. He contends that the Court while recording evidence is bound by the procedure stipulated under Sub-Rules 4, 5, 6 of Order XVIII. The corrections of any sentence which adversely affect the opposite party cannot and could not be undertaken. He places strong reliance upon the provisions referred to above and prays for

setting aside the order impugned in the revision and dismiss I.A. No.172 of 2016.

Mr.Virupaksha Dattatreya Gouda for respondent contends that the P.W.1/respondent on 08.12.2015, while answering question as to who has scribed Ex.B.1, answered that the writing in Ex.B.1 calculation sheet is not that of mine i.e., respondent herein, but the Court while recording the evidence has omitted to record the word “not”. The sentence as recorded can be treated as admission by petitioners. The respondent having noticed the omission in recording the cross examination portion has moved the instant application for the prayer referred to above. While admitting that there is no explicit provision to amend or correct oral evidence still he contends that there is no prohibition in the Code for correcting clerical, arithmetical or dates in the evidence recorded by the Court. The power to correct the evidence recorded is unavaibale to Court. The party to a lis when evidence is not properly recorded suffers irreparable injury and hardship. He places reliance upon the decisions in *Mir Mohd. Omar v. State of West Bengal*¹ and *Bankim Behari Das v. Md.Hasen Ali*². The learned counsel appearing for respondent fairly states that there is no direct provision or authority on the power of trial Court *ex post facto* to correct the “evidence” recorded under Order XVIII of CPC. From the scheme of Code, he contends that such power can be inferred and the Officer, who has recorded the evidence if is satisfied about the mistake pointed out by applicant that the word “not” is omitted while recording evidence, the Court can correct the evidence and no exception

¹ (1989) 4 SCC 436

² MANU/GH/0407/2010

can be taken. He does not dispute that Order XVIII Rule 16 does not fit into the prayer of respondent, however, Rule 16 of Order XVIII can be referred for the limited purpose of appreciating and applying the power of Court to correct the evidence already recorded. In reply to the challenge that the order impugned is brief and without reasons, learned counsel submits that the Court which is conducting the trial has substantially accepted the reasons stated by the respondent and accordingly allowed the application and the lack of reasons cannot be a ground for either setting aside or independently considering the matter by this Court.

I have heard the counsel for the parties, noted the submissions and perused the material on record in the revision petition.

The point for consideration is whether the trial Court has jurisdiction to correct evidence and insert word "not" in the cross examination conducted on 08.12.2015?

Let me examine the provisions dealing with recording of evidence in C.P.C.

Order XVIII of CPC deals with hearing of suit and examination of witnesses. Hearing and examination of witnesses are normally done in open Court by the Judge presiding the Court. Rules 4, 5 and 6 of Order XVIII read thus:

4. Recording of evidence –(1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence.

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

- (2) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court, shall be taken either by the Court or by the Commissioner appointed by it:

Provided that the Court may, while appointing a commission under this sub-rule, consider taking into account such relevant factors as it thinks fit:

- (3) The Court or the Commissioner, as the case may be, shall record evidence either in writing or mechanically in the presence of the judge or of the Commissioner, as the case may be, and where such evidence is recorded by the Commissioner he shall return such evidence together with his report in writing signed by him to the Court appointing him and the evidence taken under it shall form part of the record of the suit.
- (4) The Commissioner may record such remarks as it thinks material respecting the demeanour of any witness while under examination:

Provided that any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of arguments.

- (5) The report of the Commissioner shall be submitted to the Court appointing the commission within sixty days from the date of issue of the Commission unless the Court for reasons to be recorded in writing extends the time.
- (6) The High Court or the District Judge, as the case may be, shall prepare a panel of Commissioners to record the evidence under this rule.

(7) The Court may by general or special order fix the amount to be paid as remuneration for the services of the Commissioner.

(8) The provisions of Rules 16,16-A, 17 and 18 of Order XXVI, insofar as they are applicable, shall apply to the issue, execution and return of such commission under this rule.

5. **How evidence shall be taken in appealable cases:-** In cases in which an appeal is allowed, the evidence of each witness shall be,-

- (a) taken down in the language of the Court,-
 - (i) in writing by, or in the presence and under the personal direction and superintendence of, the judge; or
 - (ii) from the dictation of the judge directly on a typewriter; or
- (b) if the judge, for reasons to be recorded, so directs, recorded mechanically in the language of the Court in the presence of the judge.

6. **When deposition to be interpreted:-** Where the evidence is taken down in language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given.

According to Sub-Rule 2 of Rule 4, the evidence of witness in attendance shall be taken either by the Court or by the Commissioner appointed by it. Sub-Rule 3 of Rule 4 provides for recording evidence in writing or mechanically in the presence of the Judge or the Commissioner as the case may be. Therefore, the evidence recorded in writing or mechanically in the Court in the presence of the Judge or as directed by the Court by the Commissioner is treated as evidence. Rule 5 deals with the procedure for taking evidence in appealable cases. Under Rule 5 (a) the recording of evidence is in the language of Court; in writing by, or in the presence and under the personal direction and

superintendence of Judge. (*emphasis added*). Under Clause (a) (ii), evidence shall be from the dictation of the Judge directly on a Typewriter. Clause (b) deals with the evidence recorded mechanically in the presence of the Judge. Under Rule 6, the deposition is interpreted where the evidence is taken down in a language different from that in which it is given by a witness and the witness does not understand the language in which it is recorded. Therefore, it means that the evidence recorded in English is interpreted and explained to the witness in vernacular. Thereafter, the witness signs on the evidence and the Judge in whose presence evidence was recorded, certifies that the evidence has been recorded in his presence. In other case, where evidence is recorded by Court Commissioner, he certifies the recording of the evidence in the form provided by Rules 5 and 6 of Order XVIII. Once the signature of the witness is over, and the Court is satisfied with the recording the evidence in open Court, the same is treated as evidence of a party. Rules 4 to 6 of Order XVIII do not provide for correction of statements in cross examination which is pending before Court as evidence. In other words, once the signature of the party/witness is completed and the Court certifies the same, the statement so recorded becomes evidence. The respondent either in the affidavit filed by him or before this Court does not point out deviation of the procedure presently discussed by the Court. In spite of it, a prayer for amendment or inclusion of a word in the evidence recorded by a Judge in the open Court on 08.12.2015 is made and accepted. Order XVIII dealing with hearing and recording of evidence provides for all stages in the recording

of evidence namely persons who have right to commence the trial, right to reserve to lead evidence on issues covered by Rule 3(a) of the Rules and rebuttal evidence, mode and manner of recording evidence in the Court by a Judge or Commissioner as directed by the Court. The purpose of oral evidence and the object of cross examination cannot and could not be lost sight by the trial Court while accepting request for amendment of evidence already recorded, signed and certified by it. At this juncture, reference to decision in *Rohit Steels Pvt. Ltd., Secunderabad v. Poddar Projects Ltd., Hyderabad*³ is useful and the relevant portion reads thus.

“4. It is not as if only those persons, who know English, alone are permitted to depose as witnesses. In fact, majority of the witnesses depose in vernacular languages and the deposition is translated into English, by the Court. The presence of the Counsel for parties ensures that the accurate translated version of the deposition is recorded. The discrepancies, if any, are corrected at more stages than one. Firstly, when the dictation takes place, the concerned parties or their Counsel can certainly point out the real purport of the statement of the witness. Secondly, before the recorded deposition is signed, witnesses as well as the concerned Counsel are supposed to go through it. The deposition acquires its evidentiary value only, when it is signed by the witness. Once the witness has chosen to sign it, he is supposed to have been satisfied about its accuracy and he cannot be permitted to turn around and complain of any inaccuracy.

5. Permitting the correction of deposition, at a later point of time, is prone to take away the importance of cross examination. It may reflect on the capacity of the Presiding Officer also. If the sentences, in a deposition, are to be corrected, on the plea that it does not represent the correct translation, many admissions or crucial sentences, which are found to be against the interest of a particular party, can be overcome through this process.

³ 2007 (3) ALD 281

Further, if any accidental omissions have taken place and the party had lost the chance of correcting them through re-examination, the opportunity of leading further evidence to present the actual purport, is always there.”

The Code lays emphasis for conduct of trial in open Court and the public trial in open Court is undoubtedly essential for the healthy, objective and fair administration of justice. As trial is conducted in public gaze, naturally checks judicial caprice and vagaries. This is one of the reasons for enhancing public confidence in administration of justice by Courts. Openness and publicity constitute the very soul of administration of justice. Open Court conduct of trial in practice keeps the Judge trying under trial. Therefore, the Code has put in place all provisions in place for recording evidence and the sanctity attached to such statement after the same is recorded as evidence.

Pleadings in a case at best can be treated as result of instruction given by a party and settled by his counsel. Procedure enables amendment to pleadings subject to a few limitations. On the other hand, the witness deposes in open court on oath, in the presence of Advocates and recorded by the Judge as evidence, presumed to have been interpreted correctly, opportunity is available to go through the recorded evidence, before it is actually signed by witness and certified by the Court. These steps have given sanctity to statements made in court by a witness. The evidence was recorded is appreciated factually and legally under the provisions of the Evidence Act and conclusions are recorded. Therefore, for slight or strong reasons, the recorded evidence ought

not to be amended by the Court even at the instance of a party making the statements.

The power to amend evidence is not expressly provided under Order XVIII of CPC. The procedure provided under Rule 16 of Order XVIII cannot be construed as power conferred on the Court to undertake *ex post facto* corrections of the recorded evidence. In the considered view of this Court, Rule 16 deals with power of the Court to examine witnesses immediately. Rule 16(3) refers to the procedure set out in Rules 4 to 6 to and if a correction is pointed out, the Judge is empowered to carry out the corrections, then take the signature of the party and then certify that evidence is recorded. A contemporaneous omission or correction pointed out before signing the evidence has the advantage of drawing the attention of the Court which has recorded the evidence, the counsel present when the evidence was recorded do their part and then and there a *bona fide* correction can be attended by the Court. On the other hand, if the procedure stipulated in sub-Rule 3 of Rule 16 is extended for correction of evidence available on record, in the considered view of this Court, such procedure leads to an anomalous situation as pointed out by this Court in the decision referred to supra. In the case on hand, the insertion of word “not” at the instance of respondent in the impugned sentence is illegal and secondly contrary to the explicit procedure provided under Rules 4 and 6 of Order XVIII of CPC and not within the jurisdiction of the Court.

The decisions relied upon by the counsel for respondent are not directly on the point and the points decided therein are not having persuasive precedence in deciding the question that fell for consideration in this revision.

The revision is, accordingly, allowed and order impugned in the revision is set aside. No order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

Date: 17.10.2016

Note:
LR. Copy to be marked.
B/o.
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S. V. BHATT, J