

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.3459 of 2012
and
M.P.No.1 of 2012**

Suresh Bafna

.. Petitioner

Vs.

1.V.Mangayarkarasi Ammal

2.M.Velayudham

3.V.Mahendran

4.V.Elango

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 23.07.2012 and made in I.A.No.87 of 2012 in O.S.No.5989 of 1997, on the file of the XVI Additional Judge i/c. of XVIII Additional District and Sessions Court, Chennai.

For Petitioner : Mr.V.Boopathi

For Respondents : Mr.R.C.Manoharan

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order dated 23.07.2012 made in I.A.No.87 of 2012 in O.S.No.5989 of 1997 on the file of XVI Additional Judge I/C. of XVIII Additional District and Sessions Court, Chennai.

2.It is the case of the revision petitioner is that he, as a plaintiff filed a summary suit under Order 37 Rule 1 of Civil Procedure Code against the respondent herein in O.S.No. 5989 of 1997, on the file of the 16th Additional Judge, in charge 18th Additional District and Sessions Judge, Chennai for recovery of money. In the said suit the defendants 1 to 4 have filed their written statement. Thereafter on 14.03.2012 the revision petitioner/ plaintiff gave evidence as PW1 and he was also cross examined by the defendants.

3.It is the further case of the revision petitioner is that during the course of his cross examination, it is recorded that "the signatures contained in the plaint is not that of him" but he never answered like that during cross examination, however, it was recorded as stated above in line numbers 16 and 17 at page No.1 in his deposition dated

14.03.2012. According to the revision petitioner, he is Jain by birth and not known Tamil and he knows only Hindi and English. After his cross examination his signature was obtained without reading it to him and he has also signed without reading deposition. Only in the forthcoming cross examination, on verification he came to know the above said mistake. Therefore in order to delete/struck off line No.16 and 17 at page No.1 in the deposition dated 14.03.2012, the revision petitioner took out an application in I.A.No.87 of 2012 under Order 6, Rule 16(B) of CPC.

4.The respondent herein filed counter affidavit and strongly opposed the said application on the ground that the petition filed under Order 6, Rule16 (B) is not maintainable, which is meant only to struck out or amend any matter and any pleadings. Here, the revision petitioner wanted to delete his admission made before the trial Court as PW-1 during the course of his cross examination.

5.The learned trial judge on a careful consideration of the case on either side, dismissed the application. Aggrieved over the same the present civil revision petition is filed.

6.I heard Mr.V.Boopathi, learned counsel appearing for the petitioner and Mr.R.C.Manoharan, learned counsel appearing for the respondents and perused the entire materials available on record.

7.It is seen from the records that the plaintiff was cross examined by the learned counsel for the defendants on 14.03.2012 and on that day in the cross examination of PW-1 at line numbers 16 and 17, it was recorded that "the signatures contained in the plaint is not that of mine (plaintiff)". The learned counsel for the revision petitioner would submit that the plaintiff being Jain by birth, do not know Tamil, and knows only English and Hindi. On 14.03.2012 after cross examination was over the plaintiff has put his signature in the deposition. The plaintiff having filed a suit for recovery of money against the defendant would not depose that the signatures contained in the plaint are not that of him. The said mistake came to be noticed only during the next date of his cross examination. Thereafter immediately the revision petitioner filed petition to delete his cross examination line numbers 16 and 17 at page No.1. Though the learned judge has held that the above mentioned two lines would have recorded mistakenly, dismissed the application on the ground that the particular evidence in the cross examination of the revision petitioner

is not the only point to decide the case of the plaintiff or the defendant.

8.It is necessary to note what is the Order 6 Rule 16(b) of C.P.C. and it reads as follows:

“16 (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or”

9.A perusal of impugned order further reads that the evidence of PW-1 was not recorded before the learned judge who decided the application in I.A.No. 87 of 2012. The said finding of the learned judge is not sustainable and the same is against the settled proposition of Law laid down by the Hon'ble Supreme Court in a case of **Rashik Lal Manikcham Dhariwal @ ANR v. M.S.S. Food Products** reported in **2012 (1) CTC 741** wherein it is held that the judge, before whom the suit has began, if prevented by transfer or other cause from concluding trial of suit, successor judge to proceed from the stage at which predecessor judge, left the suit. Therefore the Learned trial judge ought not to have held that the evidence was not recorded before him and therefore he is not concerned what was stated by the plaintiff during cross examination.

10. The learned counsel for the revision petitioner would draw the attention of this Court to the various judgments reported in AIR Calcutta 1919 514, JT 1996(2) 649, AIR 1924 Calcutta 705 and ILR 34 Madras 141, and AIR 1956 AIR 310, and contented that in all the above referred judgments, it is categorically held that Order 18 Rule 5 requires that the deposition should be read over to the witness, still the reading over or the deposition by the witness himself was a substantial compliance with the requirements of the rule.

11. The Order 18 Rule 5 of C.P.C. states as follows:

“[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.]”

12. In the case on hand, admittedly the plaintiff is from Jain community and he does not know to read Tamil. Therefore he has adduced evidence in English and it was recorded after translation by the predecessor in the presence of trial Judge in Tamil. Hence the learned counsel for the revision petitioner contended that trial judge ought to have interpreted the evidence recorded in Tamil into English to PW-1. But in the present case the learned judge has forgotten the same. This Court seen some force in the above said submission of the learned counsel for the revision petitioner.

13. While considering the above position, in the judgment in a case of ***M.Radhakrishna Rao v. A.B.Ahmed Basha and another*** reported in **1993 (1) LW 344**, this Courts finds if there is any mistake in recording the deposition the party should take steps before the trial Court to correct it and not entitle to make a plea in the revision. The relevant portion is reads as follows:-

“The case of the tenants is that teak wood has not been used and country wood alone has been used. R.W.3 has in the chief-examination deposed to that effect. But, in the cross-

examination he has categorically stated that teak wood has been used and he has tested the wood by making an opening. It is contended by learned counsel for the tenants that there is a wrong recording of the deposition and there was no admission on the part of R.W.3 that teak wood has been used. R.W.3 is an educated man. He is a qualified Civil Engineer and he has 38 years' experience, according to his report, in the construction field. He has signed the deposition recorded by the Court. If there was any mistake in the recording, he ought to have pointed it out to the Court and got the deposition corrected. That not having been done, it is not open to counsel to raise a plea in the revisional Court that there was wrong recording of the deposition. Counsel should have gone through the depositions before arguing the matter in the lower appellate Court and he could have easily pointed out the mistake if there was any to the authority who recorded the evidence.

In the judgment in a case of **J.K.Abdul Jabbar Rowther v. V.J.Mani Raj and 5 others** reported in **1993 (2) LW 198**, the Division Bench of this Hon'ble Court has held as follows:-

“19. It is submitted by the learned counsel for the appellant that admissions can always be explained by parties and

in the present case, the statements made by P.W.1 are either inadvertently made or there is a wrong recording by the trial Court. If it is a case of wrong recording, the plaintiff should have taken steps in the trial Court itself to get the deposition corrected. His counsel could have read the deposition and informed the learned Judge of the mistake and get it corrected. No such step was taken. If it is a case of inadvertent admission, the plaintiff's counsel should have put appropriate questions in the re-examination and got an explanation from the plaintiff. There is no explanation whatever by the plaintiff in the present case of the admission and we cannot, therefore, accept the contention that the admissions of P.W.I have been explained in the present case. The proposition of law that admissions can be explained by the party concerned, cannot be disputed. In Nagabai v. B.Shama Rao, A.I.R. 1956 S.C. 593:1956 S.CA. 959:1956 S.C.C. 321:1956 S.C.J. 655:1956 S.C.R. 451:1956 An.L.T. 1029:1.L.R. 1956 Mys. 152, it is held that an admission is not conclusive as to the truth of the matters stated therein and it is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It is also held that it can be shown to be erroneous or untrue, so long

as the person to whom it was made has not acted upon it to his detriment, when it might become conclusive by way of estoppel. In *M.M.chetti v. C.Coomaraswamy Naidu and Sons*, A.I.R. 1980 Mad. 212, it is held that the law by no means regards admissions as conclusive proof of the matters admitted and the Court should examine any given admission inside out to see if it suggests any clear inference on the fact in issue against the party making it. The proposition cannot apply in the present case.

14.In the judgment in a case of **Lakshmi Priya v. K.V.Krishnamurthy** reported in **2007 (1) CTC 367**, this Hon'ble Court has held that Evidence adduced by witnesses should be assessed cumulatively and stray admissions or sentences in such evidence should not be taken in Isolation.

15.In the present case the plea of the petitioner is that he does not know Tamil and answered in English and there is a mistake in recording evidence cannot be thrown away or doubted. As held by this Court in the judgment in a case of **Lakshmi Priya v. K.V.Krishnamurthy** reported in **2007 (1) CTC 367** the stray sentence shall not be taken. The same squarely applies to this case as

the case is for recovery of money and mere recording of evidence that the signature in the plaint does not belong to plaintiff has no much relevance in view of the fact the entire plaint and case itself for recovery of money and therefore the said mistake can either be rectified or corrected or the trial Court can consider the entire evidence in consonance with the pleading.

16. The Hon'ble Division Bench of this Court in the case of **J.K.Abdul Jabbar Rowther v. V.J.Mani Raj and 5 others** reported in **1993 (2) LW 198**, has also held that unless the party takes steps to correct the mistake he is not entitled to make a plea later. In this case the petitioner has taken steps to correct the mistake scrupulously and therefore the trial Court ought to have rectified the same by allowing the petition instead of dismissing the application technically. This Court is of the view even the dismissal of application shall not bar the consideration of the issue of admission in the light of reading the entire plaint and evidence and can come to a conclusion that the same is not an admission. In view of the peculiar fact that the petitioner does not know Tamil the petitioner can also very well explain the same by re-examining him, so that the opposite party also may get an opportunity of cross examination.

17. In view of the foregoing decisions and in the light of Judgments referred above, the learned trial judge ought to have allowed the application filed by the revision petitioner and should have deleted the cross examination of PW-1 recorded on 14.03.2012 at line numbers 16 and 17 and to give opportunity to the petitioner/plaintiff to give fresh evidence in respect of the question above the signature in the plaint by permitting the respondent/defendant to cross examination of the plaintiff in the same subject. Therefore, this Court is of the considered view that the fair and decreetal order passed by the trial Court is liable to be set aside by allowing this Civil Revision Petition.

18. In the result:

(a) this Civil Revision Petition is allowed by setting aside the order passed in I.A.No.87 of 2012 in O.S.No.5989 of 1997, dated 23.07.2012, on the file of the XVI Additional Judge i/c. of XVIII Additional District and Sessions Court, Chennai;

(b) the learned trial Judge namely, XVIth Additional Judge is directed to delete the cross examination of PW1

recorded on 14.03.2012 at line numbers 16 and 17 and thereafter permit the petitioner/plaintiff to give evidence in respect of signature in the plaint by permitting the respondent/defendant to cross exam the plaintiff;

(c) the said exercise shall be done within a period of 15 days from the date of receipt of a copy of this order;

(d) thereafter, the trial Court is directed to take up the suit on day to day basis, without giving any adjournments to either parties and to dispose the same within a period of two months. Both the parties are hereby directed to give their fullest co-operation for early disposal of the suit. No costs. Consequently connected Miscellaneous Petition is closed.

31.07.2017

Note: Issue order copy on 01.08.2017

Internet: Yes

Index: Yes

vs

To

The XVI Additional Judge
i/c. of XVIII Additional District and Sessions Court,
Chennai.

WEB COPY

M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(PD)No.3459 of 2012
and
M.P.No.1 of 2012

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