

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.4629 OF 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the intermediary order in O.S.No.248 of 2012 dated 18.08.2016, passed by the I Additional Junior Civil Judge, Nellore, permitting the defendants to adduce secondary evidence i.e. marking of Photostat copy of the proceedings issued by the Assistant Settlement Officer, Nellore.

Learned counsel for the petitioners raised an objection as no foundation laid in the pleadings to adduce secondary evidence, documents cannot be admitted and contended that the Trial Court by following the judgment of the Apex Court in **Ranvir Singh v. Union of India**¹, admitted the document erroneously.

In fact, there must be foundation in the pleadings, since Order VIII Rule 1(A) Clause 2 C.P.C mandates a specific procedure to be followed for filing documents along with the plaint. Though the Trial Court placed reliance on the judgment in **Ranvir Singh**¹ case, and held that the Photostat copy is admissible, but, did not discuss anything about laying of foundation to adduce secondary evidence.

However, in **Bipin Shantilal Panchal v. State of Gujarat and another**², the Full Bench of Supreme Court in paragraphs 14, 15 & 16 held as follows:

¹ 2005 (9) SRJ 33

² (2001) 3 Supreme Court Cases 1

“It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fall out of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings.

When so recast, the practice which can be a better substitute is this: 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 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. For all other objections the procedure suggested above can be followed.) The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.

We, therefore, make the above as a procedure to be followed by the trial courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence.

Now, for disposal of the present application we may state that there is no point in our granting further time to the trial court to complete the trial. It is for the trial court to complete it as early as possible. But we would not do anything to deprive the accused in custody of his right to

move for bail on account of the delay thus far occasioned. The bail application would be disposed of by the court concerned on its own merits. With the above observations we dispose of this application.”

In view of the judgment of the Supreme Court in **Bipin Shantilal Panchal**², in the absence of any findings recorded by the Trial Court, regarding foundation in pleadings, the order dated 18.08.2016 in O.S.No.248 of 2012 is unsustainable and it is hereby set-aside. If the document is marked as exhibit, it shall be treated as marked for numerical purpose of reference. However, the order as to admissibility of the document is permitted to be postponed with a direction to decide the issue of admissibility of the document at the end of trial, in view of the law declared by the Full Bench of the Supreme Court in **Bipin Shantilal Panchal**² case.

With the above direction, civil revision petition is disposed of.

Consequently, miscellaneous applications pending if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:03.07.2017

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