

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No. 4117 of 2017

ORDER:

The petitioner/ defendant filed this Civil Revision Petition, under Article 227 of the Constitution of India, having been aggrieved of the intermediary orders, dated 09.08.2017, passed by the learned Senior Civil Judge, Peddapally, Karimnagar District, while recording the further cross-examination of PWs 1 & 2.

2. I have heard the submissions of *Sri Arun Kumar Doddla*, learned counsel appearing for the petitioner at the stage of admission. I have perused the material record.

3. The facts, which are necessary to be stated as a preface to this order, in brief, are as follows:

The plaintiff brought the suit against the defendant for recovery of money. The defendant is resisting the suit. During the cross-examination of PWs 1 and 2, after they were recalled on 04.08.2017, learned counsel for the defendant posed the following set of questions to PWs 1 and 2.

Questions posed to PW1:

- 1) How much of money you have collected from your friends?
- 2) Can you give names of all the above friends?
- 3) Have you executed any documents when you have obtained money from your friends?
- 4) Have you filed any documents to show that you have mobilized money from your friends?
- 5) On how many occasion you have paid Rs.6,00,000/- to the defendant and how much was given on each occasion?
- 6) Have you obtained any document on each occasion?
- 7) Whether attestors to Ex.A1 were present on each occasion?
- 8) I suggest that you have called them on the day of Ex.A1?

9) What was the amount paid to the defendant on the date of Ex.A1?

10) Have you not mentioned in Ex.A2 that the entire Rs.6,00,000/- was given to the defendant on the date of Ex.A1?

11) Have you informed the attestors and the scribe of Ex.A1 that you have given Rs.6,00,000/- on different occasions?

12) Have you shown calculation of the amount said to be given to the defendant to the attestors and scribe?

13) I suggest you that you have no capacity to lend Rs.6,00,000/-?

14) I suggest that you were not in possession of Ex.A1 on the date of filing of this suit and that you have filed it in the year 2012 without assigning any reason?

15) Whether the defendant is an agriculturist?

16) I suggest that you have filled the columns in Exs.A2 and A3 and also Ex.A1? (Reproduced verbatim)

Questions posed to PW2:

1) I suggest you that the plaintiff did not pay Rs.6,00,000/- to the defendant on 05.02.2005 and paid on different occasions?

2) Do you know the amount paid on each occasion?

3) I suggest you that Rs.6,00,000/- is not given as mentioned in Ex.A2, to the defendant? (Reproduced verbatim)

However, the learned Judge of the trial Court while recording depositions of the said witnesses observed in the deposition that the above said questions posed to PWs 1 and 2 respectively are out of the scope of the application, which is filed for recalling of the said witnesses. Having so observed, the learned Judge of the trial Court has not recorded the answers to the said questions posed to PWs 1 and 2 and thus, merely recorded the above questions put to the said witnesses without recording the answers. Therefore, the aggrieved defendant is before this Court.

4. Learned counsel for the defendant would submit that the trial Court was of the view that the defendant while recalling of the said witnesses should

have mentioned all the questions to be posed in the further cross-examinations of the said witnesses and therefore, observed in the so far recorded depositions of the said witnesses that the questions posed to the witnesses are out of the scope of the petitions filed to recall the said witnesses. He would further submit that the purpose for which the witnesses were recalled is already stated in the petitions filed for recalling the witnesses and that the Court below ought to have seen that the defendant cannot be insisted upon to disclose the questions even before the witnesses are recalled, as disclosing the questions even before witnesses are recalled would frustrate the purpose of recalling the witnesses.

5. He placed reliance on the decision in *Bipin Shantilal Panchal v. State of Gujarat*<sup>1</sup> in support of the contention that the procedure followed by the trial Court is contrary to the settled legal position in the decision of the Supreme Court rendered by a Bench of three Hon'ble Judges. In fact, in the cited decision, the Supreme Court noted that on different occasions the trial Judge has chosen to decide questions of admissibility of documents or other items of evidence, as and when objections thereto were raised and then passed detailed orders either upholding or overruling such objections and that the worse part is that after passing the orders, the trial Court waited for days and weeks for the concerned parties to go before the higher Courts for the purpose of challenging such interlocutory orders. Further, the Supreme Court while commenting upon the existing practice of disallowing questions and not recording answers to questions put to the witnesses in the cross-examination by passing detailed orders either upholding or overruling such objections and similar other practices, which are being followed by the trial Courts, observed that such practices are archaic practices. It is profitable to refer to the following observations in the cited decision:

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<sup>1</sup> (2001) 3 Supreme Court Cases 1

“...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.”

In the cited decision, the Supreme Court also postulated the practice, which can be a better substitute and which is 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 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.

On a consideration of the facts and the precedential guidance in the decision of the Supreme Court, it is obvious that the procedure followed by the trial Court in only recording the questions and not recording answers to the above said questions posed to PWs 1 and 2 is against the precedential guidance in the cited decision. In view of the facts and the legal position obtaining, this Court finds that the grievance of the defendant is justified and therefore, the request in the revision petition of the petitioner/ defendant merits consideration.

6. Accordingly, the Civil Revision Petition is allowed and the trial Court is accordingly directed to permit the petitioner/ defendant to once again recall the witnesses, PWs 1 and 2, and thereafter record the answers that may be given by the said witnesses to the aforesaid questions already put to them and recorded in their respective depositions. However, it is made clear that the answers that may be given by the witnesses (PWs 1 and 2) to the aforesaid questions shall either be considered appropriately, if necessary, or be excluded from consideration if the evidence is not relevant by following the precedential guidance in the afore cited decision of the Supreme Court.

Miscellaneous petitions pending, if any, in this Revision shall stand closed.

18.08.2017

M. SEETHARAMA MURTI, J

Note : Issue cc by 21.08.2017

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