

THE HON' BLE DR. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.6424 and 6450 OF 2017

COMMON ORDER:

These revisions are filed by the petitioner/ defendant No.1, aggrieved by the orders dated 23.10.2017 in I.A.No.640 of 2017 and I.A.No.641 of 2017 respectively in O.S.No.502 of 2008 passed by the XXIV Additional Chief Judge, City Civil Courts, Hyderabad.

2. Heard both sides and perused the grounds urged in the revisions and the impugned orders.

3. A perusal of the impugned orders no doubt show, earlier the document petition was allowed and C.R.P.No.4332 of 2017 filed by the 1st defendant, another Bench of this Court set aside the order as *lacunae* with a direction to pass a reasoned order consequently by affording an opportunity by filing counter since original not filed, a fresh disposal was since directed taken up and the impugned orders passed there from on 23.10.2017 respectively. These two petitions are one to receive the documents and the other seeking to permit secondary evidence to adduce.

4. So far as the impugned order in I.A.No.641 of 2017 regarding secondary evidence is concerned, there is no provision seeking to permit a secondary evidence, but for, to show foundation for adducing secondary evidence, without which, the admissibility can be questioned apart from the relevancy also to consider by the Court including from the very wording of Section 136 r/w Section 65 of the Evidence Act (for short 'the Act), leave about the

procedure to be followed under that provision of notice to produce the document, if at all in the custody of the other side and show the foundation of despite notice not produced by the other side or the original how could not be produced. So far as that secondary evidence is concerned, the petition affidavit says the G.H.M.C. authorities issued this saying the same available. However, the original special notice could not be located as it is age old one from the records. When such is the case, it can be marked subject to objection regarding proof and admissibility apart from relevancy. The Apex Court in *Bipin Shantilal Panchal v. State of Gujrat*¹ categorically held that all objections except those covering stamp duty and registration shall be left open by recording the objection to decide ultimately by avoiding archaic practice of instantaneous decisions and allowing to stall the proceedings before the trial Court by maintaining revisions granting life to it. Reiterating the same and the subsequent expressions on the admissibility of secondary evidence, this Court in C.R.P.Nos.4384 and 4385 of 2015 dated 29.09.2016 in *Kaitha NarsingRao v. Kodi Dupriya and another* held that in view of the three Judges Bench expression in *Bipin Shantilal Panchal* (supra) binding but for objections relating to stamp duty and registration all other objections are left open to finally decide to mark subject to objection if raised, leave about if no objection raised it is only a procedural aspect later cannot be raised as to the primary or

¹ 1996 SCC (1) 718

secondary evidence as laid down in RVE Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple².

5. Having regard to the above, there is nothing to interfere with the impugned order for the secondary evidence wanted to be adduced from the original stated not traced, but for, if at all any objection to raise by the petitioner/ 1st defendant among others to raise while marking for the Court to mark exhibit subject to objection as to proof, admissibility and relevancy to decide ultimately for not a matter by touching and requirement of stamp duty and registration.

6. Coming to the impugned order in I.A.No.640 of 2017 regarding receiving of the documents, no doubt, in the application not assigned any reasons for the belated filing, though required to file with the plaint in seeking leave of the Court.

7. The learned counsel for the petitioner placed reliance on the expression of this Court in G.Sanjeeva Reddy v. Indukuru Lakshamma³, wherein it is observed on the scope of Order VII Rule 14 particularly referring to clause (3) that the leave of the Court to grant within its discretion must be judicious and not arbitrary, even from the expression, it is not the right of the party if not filed with the pleadings of the party in the description of the plaint, leave it as it is. Even from the wording of Section 165 of the Evidence Act, the Court may at any stage may receive any document or put any questions in any form irrespective of relevancy but for to rely ultimately, if it is relevant for the purpose

² (2003) 8 SCC 752

³ 2006(2) LAWS (APH) 112

of deciding the case. Once such is the case including from the provisions covered by Order XVIII Rule 17 C.P.C. of such purpose if at all to recall any witness or reopen any matter for the purpose of recall, it is to consider whether the leave granted by the Court to receive the documents from the application of the party is sustainable or not. From the very wording of Order VII Rule 14 (3) C.P.C., a document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. It has to read with Sub-rule(1) of Order VII Rule 14 which mandates the party in possession or power of the document when relies to enter in the list and produce with the plaint. Where the document is not within the possession or power he cannot, from the sub-rule (2) but for to mention about any said fact it is academic of such mention.

8. So far as the documents filed herein as rightly observed by the lower Court particularly in para-7 concerned two are the e-seva certificates of the registered sale deed and sale agreement-cum-General Power of Attorney. Those are obtained subsequently and the other is MA and UD Department lay out plan of the year 2007 attested by the Assistant Secretary to Government. So far as this document is concerned, it is not stated how he got or when obtained and what is the relevancy. In fact, as referred supra in Kaitha NarsingRao, receiving of document is one thing and considering admissibility and relevancy and proof is another thing

and those aspects arise at the time of exhibiting to decide subject to objection as referred supra. Thereby, once this is also shown the documents obtained and not in possession there is nothing to find fault with the order of the lower Court in its receiving. The other documents are the correspondence obtained under Right to Information Act to show efforts made to secure the same and could secured some and could not the other. When such is the case, how far the documents are relevant and admissible and with what proof ultimately for the Court to appreciate in evidence is a matter for consideration to raise any objection while marking and premature to go into on the order covered in receiving of the documents.

9. No doubt, so far as the additional chief examination affidavit concerned, it is definitely not permissible in law. Even from the reading of Section (1) of the Evidence Act r/w Order VIII Rule 4 C.P.C. and from the expression of the Apex Court in Ameer Trading Corporation v. Shapoorji Data Processing Ltd.⁴ the affidavit itself is not an evidence unless taken as such on oath. It is only contemplated by the amended C.P.C. of filing of one affidavit in chief examination and not different affidavits in bits to take every time as further chief examination. It is also clarified by the Apex Court in Salem Advocates Bar Association, Tamilnadu v. Union of India⁵, that at the time of examination of witness, if the witness is secured by a party the witness can give his affidavit to take in chief examination and if the witness is summoned by a party and witness not given his chief affidavit, the Court or Court

⁴ 2004(1) SCC 702

⁵ 2003(1) SCC 499

Commissioner has to record his evidence in chief and cross examination. Once such is the case, for chief examination, affidavit once filed and taken on oath, the question of taking further chief examination by another affidavit does not arise, but for while permitting if at all any future chief examination to record by Court or Court Commissioner including to exhibit any documents and subject to any objection. Thereby, the trial Court shall not consider the additional affidavit as further chief examination but for recording by Court, if at all permitted any further chief examination.

10. Having regard to the above, both the revisions are disposed of for nothing to set aside the orders of the lower Court, but for, left open all the contentions that can be raised by the 1st defendant at the time of marking documents for the Court to ultimately decide from the said expressions supra.

11. Miscellaneous petitions pending consideration, if any, in this case shall stand closed. No costs.

Date: 22.11.2017
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DR. B. SIVA SANKARA RAO, J