

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

C.R.P. No.7494 of 2017

ORDER:

This revision petition is filed against the order dated 20.11.2017 passed in I.A. No.8 of 2017 in O.S. No.1313 of 2007 by the I Additional Rent Controller, Hyderabad.

2) Heard learned counsel for the petitioner and perused the grounds of revision and the impugned order of the lower Court.

3) The very prayer in I.A. No.8 of 2017, referring to Section 65 Indian Evidence Act, is to permit the petitioner to mark the Xerox copy of mutation order as secondary evidence. In fact, the question of permission by Court invoking Section 65 of the Act without complying the requirements contemplated under Sections 65 and 66 of the Act viz., Order XII Rule 8 or Order XI Rule 14 CPC or any such other form of notice to produce the document in original, in the interest of justice or otherwise as the case may be, does not arise for no enabling law of the Court to permit beyond what is provided by law. What the provision speaks is without satisfying with the legal requirements, secondary evidence cannot be admitted. In fact, the Court is entitled even under Section 136 of the Act apart from Section 65 of evidence Act to direct the party relying upon a document to show the relevancy and admissibility, before exhibiting or

allowing it in evidence. However, that is not be all and end all, more particularly, from the expression of the Apex Court in **Bipin Shantilal Panchal Vs State of Gujarat**¹ of any objection regarding proof, admissibility and relevancy other than any requirements of the stamp duty and registration to mark subject to objection and ultimately to decide the admissibility, relevancy and proof. Once such is the case, if at all, the Xerox copy to be marked, it is only subject to objection for ultimately the Court to decide if the plaintiff raised an objection, leave about the fact that this is only a procedural aspect and if no objection, while marking raised, it is deemed waived the objection regarding procedural aspect of secondary evidence and same is not left open to raise later as held by the Apex Court in **R.V.E.Venkatachala Gounder v. A.V. & V.P. Temple**², **Smt.Dayamathi Bai vs Sri K.M.Shaffi**³.

4) Having regard to the above, so far as the impugned dismissal order of the lower court is concerned there is nothing to interfere but for to follow the said procedure as settled by law and so far as receiving of a document is concerned, it is only contemplated by Order VII Rule 14 or Order VIII Rule 1-A C.P.C, as the case may be and for that purpose, invoking Section 65 of Evidence Act does not arise at all.

¹ AIR 2001 SC 1158

² 2003 AIR SCW 5316=2003 (8) SCC 752

³ 2004 (7) SCC 107

5) Accordingly, the Revision Petition is disposed of before admission. Consequently, miscellaneous petitions, if any pending in these revisions shall stand closed. There shall be no order as to costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 29.12.2017

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