

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.513 of 2017
Date of decision: 25.04.2017

R.S. Bahlan

... Petitioner

Vs.

Rakesh Satija and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ashwani Talwar, Advocate
for the petitioner.

Mr. Satinder Khanna, Advocate
for respondent No.1.

RAMESHWAR SINGH MALIK, J. (ORAL)

Instant revision petition, at the hands of defendant No.1, filed under Article 227 of the Constitution of India, is directed against the order dated 15.12.2016 (Annexure P-1) passed by the learned trial Court, whereby prayer made in the application filed by the petitioner under Order 13 Rules 3 and 6 of the Code of Civil Procedure ('CPC' for short), seeking de-exhibition of the documents already exhibited by the plaintiff-respondent No.1, was declined disposing of the application.

Notice of motion was issued.

Heard learned counsel for the parties.

Learned counsel for the petitioner, while placing reliance on the judgments of the Hon'ble Supreme Court as well as this Court in **R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple and others, 2003 (8) SCC 752 (SC), Girdhari Lal Vs. Ritesh Mahajan and another, 2005 (4) RCR (Civil) 349 and Jasjit Singh and another Vs. Prem Harjit Singh and another, 2013 (1) RCR (Civil) 514**, submits that the learned trial Court has failed to exercise its jurisdiction, while passing the impugned order. He submits that once the application was filed by the petitioner seeking de-exhibition of the documents, exhibited by the plaintiff-respondent No.1, while getting his statement recorded, the documents ought to have been de-exhibited. Since the learned trial Court failed to appreciate the law laid down by the Hon'ble Supreme Court as well as this Court in the cases referred to hereinabove, the impugned order is not sustainable in law. He prays for setting aside the impugned order, by allowing the present revision petition.

Per contra, learned counsel for respondent No.1 submits that the learned trial Court was well justified in passing the impugned order and the same does not suffer from any illegality, which deserves to be upheld. In support of his contentions, learned counsel for the contesting respondent No.1-plaintiff places reliance on the judgments of the Hon'ble Supreme Court in **Bipin Shantilal Panchal Vs. State of Gujarat, 2001 (3) SCC 1**, a Division Bench judgment of Gujarat High Court in **Shah Prabhudas Ishwardas Vs. Coparceners of a joint Hindu family of Shah Bhogiial Nathalal and others, 1968 AIR (Gujarat) 236** and a judgment of this Court in **Smt. Jaswant Kaur Vs. Satish Kumar Aggarwal and others, 2016 (4) PLR 632**. He prays for dismissal of the revision

petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the impugned order passed by the learned trial Court is factually correct and legally justified, which deserves to be upheld. The present revision petition being without any merit, is liable to be dismissed, for the following more than one reasons.

It is a matter of record and not in dispute that the documents, which were sought to be exhibited by the plaintiff-respondent No.1, while getting his statement recorded on 30.08.2016, had already been exhibited. The nature of suit filed by the plaintiff-respondent No.1 is suit for recovery by way of damages on account of defamation caused by the defendants. It is also not in dispute that at the time of exhibiting the documents at the hands of the plaintiff-respondent No.1, objection has already been taken by the petitioner-defendant about the admissibility of those documents in evidence. Thus, it becomes crystal clear that stage of exhibiting the documents has already gone and the documents already stood exhibited by the plaintiff.

Neither the petitioner challenged the order, whereby the documents were permitted to be exhibited by the plaintiff and the objections raised by the defendant-petitioner about the admissibility of exhibited documents, were allegedly not properly decided by the learned trial Court, nor the plaintiff is questioning the validity of the said order even now. Further, stage of appreciating the evidentiary value of the exhibited documents is yet to come. Having said that,

this Court feels no hesitation to conclude that the learned trial Court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld.

As noticed hereinabove, once the plaintiff-respondent No.1 had already exhibited his documents, while leading his evidence in affirmative, defendant-petitioner filed his application (Annexure P-4) under Order 13 Rules 3 and 6 CPC, seeking de-exhibition of the documents already exhibited. Since case of the petitioner is revolving around provisions of law contained in Order 13 Rules 3 and 6 CPC, it is relevant to refer these rules for ready reference and the same read as under: -

“Order 13 - Production, Impounding and return of documents

xxx

xxx

xxx

3. Rejection of irrelevant or inadmissible documents

The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

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xxx

6. Endorsements on documents rejected as inadmissible in evidence

Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of rule 4, sub-rule (1) together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.”

When learned counsel for the petitioner was confronted to bring the application (Annexure P-4) within the scope of abovesaid Order 13 Rules 3 and 6 CPC, he had no answer and rightly so, it being a matter of record. Provisions of law contained in Order 13 Rules 3 and 6 CPC do not permit maintainability of such an application. Further, the averments taken by the petitioner-defendant No.1 in the application (Annexure P-4) were not verified nor it was supported by an affidavit. Thus, the application was not maintainable. Once the application (Annexure P-4) filed by the petitioner was not even maintainable, the learned trial Court committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

The learned trial Court, before passing the impugned order, rightly examined, considered and appreciated true facts of the case as well as the provisions of law, in the correct perspective. The relevant observations made by the learned trial Court in operative para of the impugned order, which deserve to be noticed here, read as under: -

“After hearing the learned counsel for the parties and going through the pleadings, I am of the considered view that mere marking the documents as an exhibit does not absolve the parties from the duty for proving the same as settled provisions of law. Moreover, if document is not proved according to settled provisions of law, the same cannot be read at the time of final decision. Moreover, objection has already been taken by the party on the day when documents were marked as exhibited. So, it would be seen at the time of final arguments whether objection is sustainable or not and at the

time order may be passed for de-exhibiting the documents, if Court comes to the conclusion that same are not proved as per settled provisions of law, in addition to it, there is no provision in the Civil Procedure Code of the de-exhibition of the document. So, the application filed by respondent No.1/defendant No.1 for de-exhibiting the documents is hereby disposed off.”

So far as the judgments relied upon by learned counsel for the petitioner are concerned, there is no dispute about the observations made and law laid down therein. However, on close perusal of the cited judgments, none of them has been found of any help to the petitioner, being distinguishable on facts. It is settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausund Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in **Ganeshi Lal's** case (supra), reiterating its earlier view taken in **Amrit Lal Manchanda's** case (supra) and **Mohd. Illiyas's** case (supra), which can be gainfully followed in the present case, read as under:-

“11. “12....Reliance on the decision without looking into the factual

background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment

must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges

interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.

Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India Vs. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

It is the settled proposition of law that mere admission of a document in evidence does not amount to its proof. Similarly, mere marking of exhibit on a document does not dispense with its proof, which is otherwise required to be done in accordance with law, as ruled by the Hon'ble Supreme Court in **Kaliya Vs. State of Madhya Pradesh, 2013 (10) SCC 758**, reiterating its view earlier taken

in a number of judicial precedents.

Perusal of the abovesaid order passed by the learned trial Court would show that the learned Court was conscious of the fact that issue sought to be raised by the petitioner by way of his application (Annexure P-4) would be seen at the appropriate stage, in accordance with law. No fault can be found with such an approach adopted by the learned trial Court and the impugned order deserves to be upheld.

It seems that the petitioner was trying to delay the proceedings before the learned trial Court. Neither his application (Annexure P-4), moved under Order 13 Rules 3 and 6 CPC, was maintainable, nor the learned trial Court was competent to allow the same, the application being beyond the scope of abovesaid provisions of law contained in Order 13 Rules 3 and 6 CPC. Further, no prejudice of any kind, whatsoever, has been pointed out by learned counsel for the petitioner, which might have been caused to the petitioner, by passing the impugned order. Under these peculiar facts and circumstances of the case, it is unhesitatingly held that the learned trial Court was well justified in passing the impugned order and the same deserves to be upheld, for this reason as well.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court and different High Courts, including this Court: -

- 1. *Sital Prasad Saxena (Dead) by LRs Vs. Union of India and others, 1985 (1) SCC 163 (SC).***
- 2. *Bipin Shantilal Panchal Vs. State of Gujarat, 2001 (3) SCC 1 (SC).***
- 3. *Kaliya Vs. State of Madhya Pradesh, 2013 (10) SCC 758 (SC).***

4. *Shah Prabhudas Ishwardas Vs. Coparceners of a joint Hindu family of Shah Bhogiial Nathalal and others, 1968 AIR (Gujarat) 236 (Gujarat High Court).*
5. *Smt. Jaswant Kaur Vs. Satish Kumar Aggarwal and others, 2016 (4) PLR 632 (P&H).*

The law laid down by the Hon'ble Supreme Court in paras 12 to 15 of its judgment in **Bipin Shantilal Panchal's** case (supra), which aptly applies to the facts of the present case, reads as under: -

“As pointed out earlier, 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 detailed orders were passed either upholding or overruling such objections. 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.

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.”

Reverting to the facts of case in hand and respectfully following the law laid down by the Hon'ble Supreme Court and different High Courts, including this Court, in the cases referred to hereinabove, it is held that neither the application (Annexure P-4) moved by the petitioner under Order 13 Rules 3 and 6 CPC was maintainable, nor the learned trial Court committed any error of law, while passing the impugned order and the same deserves to be upheld.

It is also the settled proposition of law that the rules of procedure are meant for advancing the cause of justice. In case, a party to the litigation is found trying to cause delay in the proceedings on one or the other flimsy grounds, misusing the process of law, the learned Court would do well, while dealing with such a litigant with strong hand to ensure that no undue delay is caused in

deciding the lis between the parties. Further, a person, who is not found a bonafide litigant, would also not be entitled for any sympathy from the Courts of law. In this view of the matter, no fault can be found with the impugned order passed by the learned trial Court and the same deserves to be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order passed by learned trial Court has not been found suffering from patently illegality, the same deserves to be upheld. The revision petition having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Since the suit before the learned trial Court is pending for the last about four years, the learned trial Court is directed to expedite the proceedings and ensure early decision of the suit.

Resultantly, with the abovesaid observations made and directions issued, present revision petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

25.04.2017
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No