

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**C.M. NO.17813 CII OF 2016 &
CIVIL REVISION NO.5770 OF 2016
DATE OF DECISION: FEBRUARY 07, 2017**

Sandeep Ghai

.....Petitioner

VERSUS

Harminder Singh and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASI

**Present: Mr. Kanwaljit Singh, Sr.Advocate with
Mr. Namit Gautam, Advocate,
for the petitioner.**

**Mr. Vikas Bahl, Sr. Advocate with
Mr. Nitish Garg, Mr.Vikram Anand and
Mr. Amandeep Singh, Advocates,
for the respondents.**

AUGUSTINE GEORGE MASI, J. (ORAL)

Challenge in this revision petition is to the order dated 28.07.2016 passed by the Rent Controller, Ludhiana, whereby the application preferred by the petitioner, who is respondent in the rent petition, for de-exhibiting the documents mentioned/exhibited in the affidavit filed in the Court on 12.04.2016 in examination-in-chief alongwith documents in question by PW1 Harminder Singh (respondent No.1 herein), stands dismissed.

It is the contention of learned senior counsel for the petitioner that respondent No.1 tendered his affidavit in examination-in-chief alongwith documents in question i.e. exhibits P1 to exhibits P57 on 12.04.2016 when objection regarding mode of proof and admissibility of the

said documents was raised by the petitioner. The Rent Controller, although recorded the objections but did not decide the same and fixed the case for cross-examination of PW1. An application was preferred at this stage by the petitioner, praying for de-exhibiting the documents so exhibited. He contends that the Rent Controller should have decided the objection as has been raised there and then at the time of examination of PW1 and because of the same having not been done, the petitioner has been prejudiced as the documents, although have not been proved as mandated under the provisions of the Indian Evidence Act, 1872 (for short, “the Evidence Act”), but have been exhibited. This, he submits, is not sustainable in law. In support of this contention, he has placed reliance upon the judgement of Hon’ble Supreme Court in R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P.Temple and others, 2003 (2) R.C.R. (Rent) 579 and that of this Court in Girdhari Lal Vs. Ritesh Mahajan and another, 2005 (2) R.C.R. (Rent) 426, Net Ram, etc. Vs. Harkesh Major, etc., 1973 CurLJ 373 and further on the judgement of Madhya Pradesh High Court reported as Pawan Kumar Pathak Vs. Mohan Prasad, 2016 (1) Civil LJ 642, and that of Delhi High Court in Smt.Shail Kumari Vs. Smt.Saraswati Devi, 2002 (3) R.C.R. (Civil) 239, Rakesh Jain & Ors. Vs. Vinod Kumar Bhola, 2011 (7) R.C.R. (Civil) 2317 and Gurpal Singh Vs. C.B.I., 1997 (1) CCR 9. He, on this basis, submits that the impugned order, being unsustainable, deserves to be set-aside and the exhibited documents be ordered to be de-exhibited.

On the other hand, learned senior counsel for the respondents submits that the strict provisions of Code of Civil Procedure (for short, “CPC”) are not applicable to the rent proceedings by referring to judgements of this Court in Dr.S.P.Arora Vs. Satbir Singh, 2010 (5)

R.C.R. (Civil) 350, Municipal Council Kapurthala Vs. Chaman Lal & Another, 2015 (5) Law Herald 3942, Civil Revision No.7724 of 2013 (Lakhbir Singh @ Lakhwinder Singh @ Raja Vs. Balwinder Singh and others), dated on 16.12.2013 and Devi Sahai, Proprietor M/s Jai & Sons Vs. Mrs.Triloch Pathak, 2015 (8) R.C.R. (Civil) 156. He submits that in any case there is no provision under the CPC or under the Evidence Act for de-exhibiting the documents already exhibited. In this regard, he places reliance on the following judgements:-

“Lal Chand and others Vs. Kishan Murari Goel and others, 1995 (1) R.C.R. (Rent) 274, Gurnam Singh Vs. Roshan Lal, 2009 (1) R.C.R. (Civil) 61 and Mohd. Nazir Vs. Mohd. Ilyas, 2016 (2) PLR 397.”

He supports the impugned order as has been passed by the Rent Controller by contending that the Hon’ble Supreme Court in Bipin Shantilal Panchal Vs. State of Gujarat, 2001 (1) RCR (Criminal) 859 clearly lays down that in case where an objection is raised with regard to a document or a part of oral evidence, the trial Court can make note of such objection and decide at the last stage of final judgement.

I have considered the submissions made by counsel for the parties and with their able assistance have gone through the pleadings and the judgements, which have been relied upon by them.

The facts are not in dispute that at the time when the affidavit in examination-in-chief alongwith attached documents (now exhibits P-1 to P-57) were tendered by respondent No.1 Harminder Singh as PW1 on 12.04.2016 before the Rent Controller and objection regarding mode of proof and admissibility of the said documents was specifically taken by

counsel for the petitioner but the court did not pass any order in this regard.

The order dated 12.04.2016 passed by the Rent Controller reads as under:-

“PW1 Harminster Singh s/o S.Shamsher Singh s/o Late S.Sunder Singh R/o 23-R, Model Town, Jalandhar.

On Sa

I tender into evidence my duly sworn affidavit Ex.PA alongwith documents Ex.P1 to Ex.P57 and Mark PA to PD which may be read as part of my examination in examination in chief. I have brought the original will of S.Shamsher Singh, original license, original bills, today in Court. (all exhibited documents objected to on the ground of mode of proof and admissibility).

XXXXX deferred.

RO&AC.

Sd/-

CJJD/Ldh./12.04.2016”

A perusal of the above would show that no order has been passed with regard to the objections, which had been taken by counsel for the petitioner qua the documents with regard to the mode of proof and admissibility while deferring the cross-examination of the witness.

Firstly, dealing with the preliminary objection which has been raised by learned senior counsel for the respondents that strict provisions of the CPC are not applicable to the proceedings before the Rent Controller. This is a settled legal position and, therefore, not disputed by the counsel for the parties. Intention of the legislature was to provide a special and expeditious procedure for disposal of matters under the East Punjab Urban Rent Restriction Act, 1949 (for short, “the Rent Act”). It has been left upon the authorities under the Rent Act to devise their own procedure free from technicalities and formalities of procedural law except for what has been

provided under Sections 16 and 17 of the Rent Act itself. The intention was to expedite the decision making process in the lis but that does not mean that basic principles as laid down and provided for under the CPC cannot be taken note of, overlooked or violated, especially when the orders passed by the authority reflect that the same are being followed and, thus, made applicable. In any case, the procedure to be adopted by the Rent Controller should be just, reasonable, equitable, satisfying the test of principle of natural justice and fair play, causing no prejudice to any of the parties to the lis. The assertions of counsel for the parties have, thus, to be tested on the touchstone of this principle vis-à-vis the case in hand.

As is apparent from the pleadings of the parties, the Rent Controller had adopted the procedure as provided for under Order XVIII Rule 4 of the CPC as examination-in-chief of PW1 has been taken through an affidavit alongwith documents and, therefore, the principle, as laid down therein, would be applicable and need to be followed as far as possible. According to Order XVIII Rule 4 of the CPC, where documents are filed and the parties rely upon the same alongwith the affidavit, the proof and admissibility of such documents shall be subject to the orders of the court. Thus, it is apparent that merely because documents have been filed alongwith the affidavit, the same would not ipso-facto be admissible in evidence as the same are subject to the orders of the Court.

Going through pleadings of the parties, the orders passed by the Rent Controller, the submissions of the counsel and various judgements which have been relied upon by the counsel for the parties, the question which would crop up for consideration before this court would be, as to at which stage the objection to the admissibility and/or proof of documents,

which may be produced or tendered, should be raised, considered and decided by the Court?

Another question, simultaneously which would arise is, at what stage objection to the admissibility or relevancy of evidence contained in the affidavit filed under Order XVIII Rule 4 of the CPC should be considered and decided by the Court?

Reference to Order XIII, which deals with production, impounding and return of documents would be required as Rules 3 to 7 thereof would be relevant for seeking answer to the question which arises in the present case. Rule 3 deals and empowers the Court at any stage of the trial to reject any document, which it considers irrelevant or otherwise inadmissible by recording the grounds for such rejection. Rules 4 and 5 deal with endorsement of documents admitted in evidence and Rule 6 deals with endorsement on documents rejected as inadmissible in evidence. This is done where a document relied upon as evidence by any of the parties is considered by the court to be inadmissible in evidence together with the statement of it having been rejected with endorsement signed in or initialled by the Judge.

These provisions clearly indicate that objection to the admissibility of a document should be raised by the party so objecting before the endorsement is made and the court is obliged to consider the said objection, form its opinion and record the same which is followed by and endorsement thereon with regard to the document being admitted or not in evidence. Thus, prior to the endorsement with regard to admissibility of a document and its endorsement, objection has to be raised, which, therefore, requires a decision by the Court on it.

Once a document has been endorsed as admitted and exhibited in terms of Rule 4 in exercise of its powers under Rule 6 of Order XIII of the CPC, it would not be possible to de-exhibit the same and, therefore, the Court is obliged to take a decision on the objection raised by either of the parties at that stage itself. There is no provision enabling the Court to postpone the objection regarding admissibility or proof of document and, therefore, the question as to admissibility of a document should be decided as it arises and should not be deferred until the judgement is given in the case.

The obvious reason for this course to be adopted is that if the Court allows the objection, the party tendering the evidence may take such steps as may be available to it to get the lacuna remedied. Once inadmissible evidence is admitted on record, it is impossible to say what its effects may be on the mind of the person who hears it. It creates an atmosphere of prejudice, effecting fair trial. It may, unconsciously, be regarded by judicial mind as corroboration of some piece of evidence legally admissible and thereby obtain for latter quiet undue weight and significance. Reference in this regard may be made to the judgement of Privy Council in Gopal Das Vs. Sri Thakurji, AIR 1943 PC 83.

Now moving on the next stage as to the admissibility or otherwise of a document. The admissibility of a document in evidence may be classified into three categories, the Ist being an objection with regard to there being insufficiently stamped document i.e. there is deficiency in stamp duty of the document; IInd would be where the admissibility of the document in evidence is not disputed but the objection is with regard to the mode of proof alleging it to be irregular and insufficient and the IIIrd

would be an objection with regard to a document which is being sought to be proved to be abinitio and/or inadmissible in evidence.

With regard to Ist category of cases regarding the admissibility and the objection i.e. insufficiency of stamp duty on the document tendered in evidence, the objection has to be raised before it is marked as an exhibit and if the same has been admitted in evidence because of non-taking of any objection, it is not open either to the trial court or to the court of appeal or revision to go behind the order. Reference in this regard can be made to the judgement of Hon'ble Supreme Court in Zaver Chand Vs. Pukhraj Surana, AIR 1961 Supreme Court 1655. However, it may be clarified here that if the objection relating to deficiency of stamp duty of a document is taken, the Court has to decide the same before proceeding further. Thus, an objection relating to deficiency of stamp duty has to be taken at the earliest and cannot be raised or decided at a later stage of the trial once a document has been admitted in evidence and exhibited.

As regards the IInd category of cases i.e. the objection is directed towards the mode of proof alleging the same to be irregular or insufficient, although the admissibility of the document is not disputed, the said objection should be taken when the evidence is tendered. Once the document has been admitted in evidence and marked as exhibit, the objection that it should not be admitted in evidence or that the mode adopted for proving the document is irregular, cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. This is based upon the principle of rule of fair play for balancing the equities between the parties so that none is prejudiced. For instance, if an objection is taken by a party before the admission in evidence of a document

and the same is sustained, it would enable the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. However, if the decision is not taken, then the party tendering evidence is put to disadvantage. Therefore, a prompt objection and a decision thereon does not prejudice any of the parties but would enable the Court to apply its mind and pronounce its decision on the question of admissibility there and then.

There may be a case where objection is raised to a document's admissibility where complex issues are required to be resolved or it is dependent upon receipt of further evidence, in such situations, the decision may be differed in the interest of justice but in any case, it has to be decided well before the final decision is pronounced. This procedure is to be followed in exceptional circumstances by making an observation in this regard at the stage when the objection is raised.

On the other hand, failure to raise a prompt and timely objection with regard to mode of proof, amounts to waiver of necessity for insisting on formal proof of a document itself, which is sought to be proved as admissible in evidence. This omission to object becomes fatal because by failure of a party, which is entitled to object, allows the party tendering the evidence to act and proceed on assumption that the opposite party has no objection about the mode of proof. Thus, the objection in such situations has to be taken prior to admission of the document in evidence.

As regards the IIIrd category, where the document has been objected to being abinitio and/or inadmissible in evidence, even if it is not objected to prior to its admission, an objection can be raised at any stage of hearing, including in appeal or revision as well. The reason is quiet obvious

that an inadmissible document cannot be read into evidence merely on account of the fact that such document has been given an exhibit number in the affidavit filed in examination-in-chief or while recording oral evidence.

In view of the above, it can safely be concluded that in the first two categories, objection to the admissibility of the document need to be taken before the document is exhibited, which requires the Court to take a decision on an objection, if taken, before the document is exhibited. In other words, where objection as to a document is admissible or inadmissible should be raised at the time when the document is being proved or put in or the question asked to the witness as this practice would be fair to both the parties. The view, which is being followed by me in the present case is based upon the three Judges Bench of the Hon'ble Supreme Court in the case of P.C.Purushothama Reddiar Vs. S.Perumal, (1972) 1 SCC 9, which has been followed by two Division Benches of the Supreme Court in R.V.E.Venkatchalla Gounder's case (supra) and Dayamathi Bai Vs. K.M.Shaffi, 2004 (3) RCR (Civil) 721 as these judgements pertained to civil matters and, therefore, would be relatable and read with the case in hand.

In the case of Bipin Shantilal Panchal (supra), on which reliance has been placed by counsel for the respondents, where the Hon'ble Supreme Court has expressed its view and referred to the procedure to be followed in case of objection taken with regard to the documents and the part of oral evidence to be decided at the last stage in the final judgement is based upon the peculiar factual matrix arising out in a criminal trial where there has been a prolonged delay at the trial Court for almost 10 years in breach of Article 21 of the Constitution of India, which guarantees speedy and expeditious trial.

It is a settled principle that if a statute requires a particular thing or procedure to be followed and done in a specific manner, then it cannot be done in any other manner, as held by the Hon'ble Supreme Court in catena of judgements and reference can be made to the judgement of State of U.P. Vs. Singhara Singh, AIR 1964 SC 358. Although, the strict procedure of CPC is not applicable to the proceedings under the Rent Act except for as made applicable but if some provision is adopted by the Rent Controller, then it would be applicable and in any case at least the basic principles as expressed above by this Court fulfilling the requirement of principles of natural justice and fair play, causing no prejudice to any party to the lis. The procedure so adopted should be for the just adjudication of the case in order to solicit and find out the truth during the enquiry.

In the present case procedure as laid down under Order XVIII, Rule 4 of the CPC has been adopted and followed by the Rent Controller as the examination-in-chief of Harminder Singh (PW1), respondent No.1 herein, has been taken on affidavit alongwith attached documents. Objections to the proof and admissibility of these documents have been raised by the petitioner herein, which, according to the proviso to Rule 4(1) of Order XVIII, shall be subject to the orders of the Court, which have not been passed by the Rent Controller.

It has been held above that whether a document is admissible or not in evidence has to be decided at the time the same is put in/proved and/or questioned to the witness. This procedure needs to be followed except in cases where objection is raised but further/other evidence is expected, which would remove the objection. Decision in such situations, on objections, may be deferred by recording so but should be, in any case,

given before the judgement is pronounced finally to avoid any prejudice to any party. In the case in hand the Rent Controller has not passed any order on the objections raised by the petitioner herein on the documents which cannot sustain.

In view of the above, this court is of the considered view that the Rent Controller should have proceeded to pass appropriate order on the objection raised by counsel for the petitioner herein with regard to the mode of proof and admissibility of the attached documents alongwith the affidavit tendered in evidence by respondent No.1 (PW1) in examination-in-chief on 12.04.2016 prior to admitting the documents in evidence as exhibits. It may be added here that there is no provision for de-exhibiting the documents which have already been exhibited in evidence. However, mere exhibition of the said documents does not dispense with the proof of its execution, veracity and genuineness, which is to be tested.

A direction is, thus, issued to the Rent Controller to decide the objections as raised by counsel for the petitioner with regard to the admissibility of the documents prior to further proceeding with the case, if already not decided.

The present revision petition stands disposed of in the above terms.

Since the main petition stands disposed of, no orders are required to be passed on C.M. No.17813 CII of 2016.

February 07, 2017
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No