THE HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.No.5527 of 2011

ORDER:

Heard Mr.Hari Kishan holding for Mr.P.Rajasekhar for petitioners and Mr.N.Subba Rao for respondents 1 and 2.

The revision is directed against the order dated 16.06.2011 in O.S.No.43 of 2007 on the file of Senior Civil Judge, Bapatla. The following undisputed circumstances are adverted to for disposing of the civil revision petition.

Respondent Nos.1 and 2 filed an application before the trial Court to summon income tax assessment record of Sri Venkateswara Auto Finance, Bapatla/3rd respondent herein. The application was ordered and the income tax officer (P.W2) produced the record to Sri Venkateswara Auto Finance herein. The record produced by P.W2 among other documents contains partnership deed dated 01.04.2001. The objection of the revision petitioners against receiving or marking of partnership deed dated 01.04.2001 is made under the Registration Act, the Partnership Act and the Evidence Act. The learned trial Judge, after taking note of the alleged signatures of partners on partnership deed dated 01.04.2001, overruled the objections and marked partnership deed dated 01.04.2001, Ex.X1. The order dated 16.06.2011, against which the present civil revision petition is filed, reads as follows:

"The objection raised by the counsel for defendants even for marking of the same as subject to objection is overruled"

The petitioners contended that respondent Nos.1 and 2 filed petition for summoning the documents from the office of income tax department. The production of record cannot and could not be understood as free from other legal objections available under the Registration Act, the Partnership Act and the Evidence Act. Therefore, the document should have been marked subject to objection, leaving it open to the petitioners herein to contend on the legality or evidentiary value etc., at appropriate time. The petitioners rely on decision reported in ***R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple and another***[1] for the proposition that once the objections are raised, the document cannot and could not be admitted firstly without deciding those objections. Secondly, if objections are not raised and the document comes on record at a later point of time, the revision petitioners are precluded from raising the objections available under law. The petitioners relied on the following paragraphs 19. 20 and 23.

> "Order 13 Rule 4 of the CPC provides for every document admitted in evidence in the suit being endorsed by or on behalf of the Court, which endorsement signed or initialed by the Judge amounts to admission of the document in evidence. An objection to the admissibility of the document should be raised before such endorsement is made and the Court is obliged to form its opinion on the question of admissibility and

[1] AIR 2003 SC 4548

express the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence. In the latter case, the document may be returned by the Court to the person from whose custody it was produced.

The learned counsel for the defendant-respondent has relied on The Roman Catholic Mission Vs. The State of Madras & Anr. AIR 1966 SC 1457 in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been 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. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.

Since documents A30 and A34 were admitted in evidence without any objection, the High Court erred in holding that these documents were inadmissible being photo copies, the originals of which were not produced."

Therefore, the petitioners prayed for setting aside the order impugned in the civil revision petition.

Mr.N.Subba Rao per contra contends that the objection that the firm is not registered is factually untenable and as noted by the trial Court, the department has accepted the partnership deed with signatures of all the partners on the Xerox copy. He is not disputing the ratio laid down by the Apex Court in ***R.V.E. Venkatachala Gounder*'s case** and submits that respondents 1 and 2 herein have no objection, if Ex.X1 is taken on record and marked as one of the exhibits, subject to all legal and factual objections available in this behalf.

I have perused the record and taken note of the ratio laid down in ***R.V.E. Venkatachala Gounder's case*** and also the submission of Mr.N.Subba Rao.

The civil revision petition is disposed of without further deliberation as follows:

"The marking of Ex.X1 vide order dated 16.06.2011 is subject to the legal and factual objections available to the revision petitioners. The sentence namely "The objection raised by the counsel for defendants even for marking of the same as subject to objection is overruled" in the order dated 16.06.2011 is set aside. No order as to costs.

The learned trial Judge considers disposing of the suit as expeditiously as possible, preferably within three (03) months from the date of receipt of copy of this order.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Dt: 31.08.2018
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