

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH**

CIVIL REVISION PETITION No.1355 of 2018

Between:

Sri Mohammed Aleemuddin

.....Petitioner

and

Sri Anney Vishwanath Rao died per L.R. Sri Sunil Kumar Anney

.....Respondent

Date of Judgment pronounced on : 02-04-2018

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes/No
3. Whether The Lordship wishes to see the fair copy
Of the Judgment? : Yes/No

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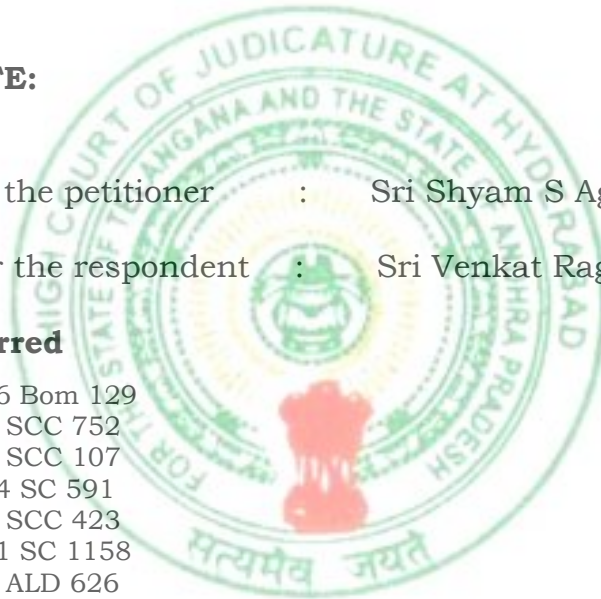
> HEAD NOTE:

! Counsel for the petitioner : Sri Shyam S Agarwal

^ Counsel for the respondent : Sri Venkat Raghu Ramulu

? Cases referred

1. AIR 1956 Bom 129
2. (2003) 8 SCC 752
3. (2004) 7 SCC 107
4. AIR 1994 SC 591
5. (2010) 8 SCC 423
6. AIR 2001 SC 1158
7. 2017 (1) ALD 626
8. (2011) 4 SCC 240



HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**CIVIL REVISION PETITION No.1355 of 2018****ORDER:**

The revision petitioner is the petitioner in R.C.No.391 of 2009 on the file of II Additional Rent Controller, Hyderabad, filed under Section 10 of A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short 'the Act') for eviction of the respondent/tenant.

2. After the evidence of the petitioner in deciding the contentious issues/points for determination, on behalf of respondent, RW.1 was examined on 19 & 21.12.2017. The relevant portion in the cross examination dated 21.12.2017 continuation of RW.1 i.e., RC.No.391 of 2009 respondent Sunil Kumar Anney for the purpose of revision covered by the part of the deposition of the witness during cross examination, which is in fact the observation of the Court of the happening before it in that course is that: "The learned counsel for the petitioner confronted the signature on the Xerox copy of the letter dated 20.05.2009 and posed a question whether, he can identify the signature on the bottom of the said letter (Xerox copy), then the witness answered he identified the signature to be the same of his father, the witness further adds that, this letter does not belong to him. Re-examination nill.

3. The above observation of the Court of the happening before it during cross-examination of RW.1 supra shows when a Xerox copy of a letter containing a signature on the bottom with the duly filled contents, when signature is confronted witness answered of he identified the signature to be the same of his

father. The trial Court did not exhibit that signature even the learned counsel for RW.1-respondent did not choose to seek any further examination by re-examination of the witness for any clarification, might be for the reason the witness added of this letter does not belong to him.

4. Here two questions arisen in the revision to answer. One is in such case a document petition is required to be filed as contemplated by Rule 7 Clause (5) of the Rules framed under the Act 1960.

“7. (1) Every application under the Act shall in addition to the particulars necessary to support it contain also the particulars prescribed in Rule 3 so far as they may be applicable and every application for eviction under Section 10 shall also state the grounds on which the application is made accompanied by the agreement of tenancy, if any, rent receipt and a copy of the notice issued to the tenant.

(2).....

(3).....

(4) The parties or their counsel shall produce, at the first hearing of the case, all the documentary evidence of every description in their possession or power on which they intend to rely, and which has not already been filed, and all documents which the Controller has ordered to be produced, and the Controller shall receive the documents so produced.

(5) No documentary evidence in the possession or power of any party which should have been, but has not been produced in accordance with the requirements of sub-rule (4) shall be received at any subsequent stage of the proceedings, unless good cause is shown to the satisfaction of the Controller for the non-production thereof; and the Controller receiving any such evidence shall record the reasons for so doing.

(6) The Controller may at any stage of the case reject any document which he considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

(7) (i) Subject to the provisions of clause (ii), there shall be endorsed on every document which has been admitted in evidence in the case the following particulars, namely:

(a) the number and title of the case.

(b) the name of the person producing the document.

(c) the date on which it was produced; and

(d) a statement of its having been so admitted; and the endorsement shall be signed or initialled by the Controller.

(ii) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under sub-rule (8), the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Controller.

(8) (i) Save in so far as is otherwise provided by Banker's Book Evidence Act, 1891, where a document admitted in evidence in the case is an entry in a letter-book or a shop book or other account in current use, the party on whose behalf the book or account is produced, may furnish a copy of the entry.

(ii) Where such a document is an entry in a public record produced from a public office or by a public officer or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Controller may require a copy of the entry to be furnished:

(a) where the record book or account is produced on behalf of a party, then by that party; or

(b) where the record book or account is produced in obedience to an order of the Controller acting of his own motion, then by either or any party.

(iii) Where a copy of an entry is furnished under the provisions of clauses (i) and (ii), the Controller shall, after causing the copy to be examined, compared and certified, make the entry and cause the book, account or record in which it occurs, to be returned to the person producing it.

(9) Where a document relied on as evidence by either party is considered by the Controller to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of clause (i) of sub-rule (7), together with a statement of its having been rejected and the endorsement shall be signed or initialled by the Controller.

(10) (i) Every document which has been admitted in evidence, or copy thereof, where a copy has been substituted for the original under sub-rule (8), shall form part of the record of the case.

(ii) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

(11) Notwithstanding anything in sub-rule (8) or sub-rule (10), the Controller may, if he sees sufficient cause, direct any document or book produced before him in any case to be impounded and kept in his custody for such period and subject to such conditions as he think fit.

(12) (i) Any person, whether a party to the case or not desirous of receiving back any document produced by him in the case and placed on the record shall, unless the document is impounded under sub-rule (11), be entitled to receive back the same:

(a) where the case is one in which an appeal is not allowed when the case has been disposed of; and

(b) where the case is one in which an appeal is allowed, when the Controller is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of :

Provided that a document may be returned at any time earlier than that specified by this sub-rule if the person applying therefor delivers to the Controller a certified copy to be substituted for the original and undertakes to produce the original, if required to do so:

Provided further that no document shall be returned which, by force of the order of the Controller, has become wholly void or useless.

(ii) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.”

5. From the above mainly concerned with clause 5 supra unless the cause is shown to the satisfaction of the Rent Controller for non-production of the document in possession or power of a party that has not been produced earlier, if at all to receive reasons to be recorded for receiving. The second question is once the witness in the course of cross-examination when confronted with a document without even filed earlier as contemplated by the Rule supra if witness admits any portion of it can the Court refuse including to say it is only a secondary evidence without foundation to the existence of original or a petition as contemplated by Rule 7(5) supra still required. The wording of Rule 7(5) supra is relevant for the purpose is reproduced herein. Same is silent regarding the requirement or not of a petition if confronted by other side during the course of cross examination.

6. From the above, though the Rules framed under the Act are the special law governing the procedure right from time of filing till termination of the proceedings before the Rent Controller, once the rules are silent regarding any particular or specific procedure, the general provisions of CPC and Indian Evidence Act are applicable cannot be disputed. It is the age old practice recognized from the decisions of several High Courts including vividly by the expression of the Bombay High Court in **Melappa and another Vs. Guramma and Others**¹, that in the course of cross-examination to confront with a witness a document petition earlier to be filed is not contemplated, but for to say if the witness admits the document, it is to be marked by filing the same with memo by supply copy to the other side and if not admitted, the document

¹ AIR 1956 Bom 129

cannot be received to the file, but for to drive the party to file with a petition if at all. The same is culminated into a statutory provision under CPC more particularly from Order 13 Rule 2(2) CPC prior to the CPC amendment in 2002 which say the following documents need not be produced by a party where the document produced for the cross examination of witness or witness of opposite party, the documents which are handed over to witness to refresh his memory. Refreshing of memory is contemplated by Section 159 of the Evidence Act which speaks a witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory. The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.....

7. As per CPC amendment incorporating for the plaintiff's belated filing of the documents contemplated by Order 7 Rule 14 and of the defendant's belated filing of the documents covered by Order 8 Rule 1-A specifically sub Rule 4 contemplating in both the provisions a kin to earlier Order 13 Rule 2 referred supra of in the course of cross examination when confronted to a witness earlier filing of document petition for the belated filing is not required.

8. Thus though the Rent Control Act 1960 Rule 7 is silent, such recourse has arisen in the case referred supra. Once the provisions of the Evidence Act and CPC taken care as the general procedure and the Rules of Evidence that apply same has to be

applied. Thus for the purpose once the witness admits to any extent, leave about such evidentiary value of the witness as part of the ultimate appreciation by the Court has to rely from its relevancy fully or by requiring corroboration or to serve as peace of corroboration to any other substantive peace of evidence. It is premature for not a stage to appreciate while marking more particularly from the fact that mere marking of a signature is not marking of a proof of the contents of the document; the contents are to be proved otherwise. Once the signature is marked, which is portion of the document from which it contained it is to be made clear that again filing of the petition to receive as secondary evidence with foundation to the primary evidence may not arise, but for to say if at all contents are chosen to prove foundation required to lay for the existence of the original for adducing secondary evidence required. Here it is not the stage nor necessary to discuss further, but for to say so far as that signature concerned, once admitted there is no further proof to the extent of its admission for marking concerned, even that document containing signature is not primary but secondary being Xerox copy of document. Once a document admitted for marking even it is a copy and no foundation laid of its original in existence, it is only a procedural aspect and subsequent objection regarding its marking cannot be raised is the law well settled by the Apex Court in **RVEV Gounder Vs. Arulmigu Viswesaraswami & V.P Temple**², the same is quoted with approval by another bench of the Apex Court in **Dayamati Bai Vs. KM Shafi**³.

² (2003) 8 SCC 752

³ (2004) 7 SCC 107

9. The learned counsel for the revision respondent drawn attention of the Court to a three judge bench expression of the Apex Court in **Government of A.P. Vs. Karri Chinna Venkata Reddy**⁴ with reference to Sections 62 & 63 of the Evidence Act that an objection as to tampering of record and fictitious nature of document even not raised genuineness of the document once fundamental question, copy should have been accepted in evidence after examining original record was the conclusion therein. Here if the other side objects to the marking, comparison arises. Once other side admits to the marking, question of production of original or comparison with original does not arise more particularly what is laid down by the Apex Court in **RVEV Gounder and Dayamati supra**. No doubt the other expression placed reliance is **Shalimar Chemical Works Limited Vs. Surendra Oil and Dal Mills (Refineries) and Others**⁵ referring to Order 13 Rules 3 & 4 CPC of the procedure saying where secondary evidence regarding registration certificate of the trade mark registration of the entity raised the Court differing the same without instantaneously deciding of the same is observed as depreciable in fact. In **Shalimar supra**, the three judge expression of the Apex Court in **Bipin Shantilal Panchal Vs. State of Gujarat**⁶ not brought on record where it is the observation that unless it is on stamp duty and registration any objection regarding the nature of document or proof, relevancy and admissibility etc., shall be decided ultimately rather than deciding instantaneously by the archaic practice that gives life to the litigation of maintaining revisions from said giving

⁴ AIR 1994 SC 591

⁵ (2010) 8 SCC 423

⁶ AIR 2001 SC 1158

of observation and thereby directed all Courts to follow the procedure to mark subject to objection and decide only ultimately at the final hearing. In view of the same as observed in **Kaitha Narsinga Rao Vs. Kodi Supriya and another**⁷, the **Shalimar supra** is hit by sub silentio from what is also laid down in **RVEV Gounder** and **Dayamati supra**.

10. Coming to another important decision the learned counsel for the revision respondent placed reliance of two judge bench of the Apex Court in **H. Siddiqui (dead) by LRS Vs. A. Ramalingam**⁸, it is also in relation to admission of a signature on Photostat copy of a document. It is categorically observed therein that mere admission of a signature on Photostat copy of a document is not admission of the contents of the document and when originals are not produced at any time nor any factual foundation laid for giving secondary evidence, it is impermissible to allow party to adduce secondary evidence is also the further observation in relation to the proof of the contents of the document in this regard as already observed supra what is to be marked only a signature that too by making a mention that when the Xerox copy signature is confronted to the RW.1-witness on 21.12.2017, the witness answered that he identified the signature to be the same of his father and witness further added that this letter does not belong to him.

11. Thus whether it amounts to a clear admission or only a corroboration peace regarding the signature or it requires any corroboration from the other material is a matter of ultimate

⁷ 2017 (1) ALD 626

⁸ (2011) 4 SCC 240

appreciation and so far as that marking of the signature concerned, the expression in **Siddiqui supra** also no way says even signature admitted on the Xerox copy it cannot be marked. Thus the order of the lower Court in not marking the disputed signature portion of the document to the above extent stated as that of his father is unjust, thereby set aside with a direction to the lower Court to mark that signature portion with the observation as indicated above. Needless to say in view of the above, the parties stated they closed their evidence if any application filed by any of the parties, the lower Court shall permit by receiving any memo both parties wants to adduce any further evidence.

12. Accordingly and in the result, the Civil Revision Petition is allowed.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 02.04.2018

Note: L.R. Copy to be marked

(B/o)

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