

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

Civil Revision No.1227 of 2018 (O&M)

Date of Decision: April 02, 2018

Jasbir Singh

...Petitioner

Versus

Gurmeet Singh and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Varun Sharma, Advocate
for the petitioner.

HARINDER SINGH SIDHU, J.

This revision has been filed impugning the order dated 10.01.2018 of the Ld. Rent Controller, Jalandhar, whereby, the application of the tenant-petitioner praying for de-exhibiting the rent agreement (Ex.P4), has been dismissed.

The respondent – landlord filed a petition under Section 13 of the East Punjab Urban Restriction Act, 1949 for ejectment of the petitioner – tenant from a shop. It was claimed that the shop in dispute had been rented out to Prithipal Singh, father of the petitioner and after his death the petitioner was a tenant therein. The respondent landlord in his affidavit in examination-in-chief dated 2.3.2016 relied on a rent agreement, alleged to be executed by the petitioner in his favour. The said rent agreement was exhibited as Ex.P4.

The petitioner filed an application (Annexure P-3) for de-exhibiting the rent agreement stating that it was not admissible as it was not

properly stamped and not registered. He prayed that the objection to the admissibility of Ex.P4 be decided before the cross-examination of the respondent- landlord. The respondent in his reply to the application contended that the application was liable to be dismissed as it was filed only to delay the proceedings. The affidavit in examination-in-chief was tendered on 2.3.2016. Thereafter, repeated adjournments had been taken on 17.3.2016, 12.4.2016, 7.7.2016 and 10.8.2016 when the landlord was present to be cross-examined, but was not cross-examined by the petitioner-tenant. He further contended that as there was no dispute with regard to the relationship of the parties, the rent agreement was only to be read for collateral purposes. The landlord also offered to deposit the deficient stamp duty.

The Ld. Trial Court vide the impugned order dismissed the application observing that there was no provision under the Code of Civil Procedure for de-exhibiting any document. The tenant had not raised any objection when the disputed rent agreement was exhibited. It was also held that the counsel for the tenant would have ample opportunity to cross-examine on the authenticity of the rent note and that the counsel for the tenant could raise objections, which would be decided at the time of arguments. For the aforesaid reasons, the application was dismissed and the case adjourned for cross-examination of the landlord PW1.

Ld. Counsel for the petitioner has assailed the aforesaid order contending that by the impugned order, the Ld. Trial Court had postponed the decision on the admissibility of the rent agreement to a later stage of the trial. He contended that it is settled that any objection as to admissibility of

till the final disposal of the case.

Ld. Counsel for the respondent- landlord on the other hand contended that the petitioner having not raised any objection to the admissibility to the rent agreement when it was tendered, is precluded from raising it at a subsequent stage. The Ld. Trial Court rightly dismissed the application. After the document had been exhibited, it was impermissible for the tenant to raise objections regarding its admissibility .

Having heard Ld. Counsel for the parties, I am of the view that there is no merit in the revision petition and the same deserves to be dismissed.

Admittedly the document in question has already been marked in evidence as Ex.P4. As per Section 36 of the Stamp Act, once a document has been admitted in evidence the same cannot be called in question. In the instant case, the document in question was marked as exhibit without any objection being raised to its admissibility on the ground of being insufficiently stamped. He, thereafter, availed of numerous opportunities to cross-examine the respondent landlord and only at the very late stage filed the application for de-exhibiting the rent agreement Ex.P4. Having failed to raise an objection to the admissibility thereof at the time of marking it as an exhibit, it is not open to the petitioner tenant to raise such an objection at a later stage.

It was held by Hon'ble the Supreme Court in **Javer Chand V. Pukhraj Surana, AIR 1961 SC 1655** while interpreting the scope and object of Section 36 of the Stamp Act as under:

“4....In our opinion, the High Court misdirected itself, in its view of the provisions of Section 36 of the Stamp Act. Section 36

is in these terms:

“Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.”

That section is categorical in its terms that when a document has once been admitted in evidence, such admission cannot be called in question at any stage of the suit or the proceeding on the ground that the instrument had not been duly stamped. The only exception recognised by the section is the class of cases contemplated by Section 61, which is not material to the present controversy. Section 36 does not admit of other exceptions. Where a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped, it has to be decided then and there when the document is tendered in evidence. Once the court, rightly or wrongly, decides to admit the document in evidence, so far as the parties are concerned, the matter is closed. Section 35 is in the nature of a penal provision and has far-reaching effects. Parties to a litigation, where such a controversy is raised, have to be circumspect and the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the court. The court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. The record in this case discloses the fact that the hundis were marked as Exts. P-1 and P-2 and bore the endorsement “admitted in evidence” under the signature of the court. It is not, therefore, one of those cases where a document has been inadvertently admitted, without the court applying its mind to the question of its admissibility. Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the

case and has been used by the parties in examination and cross-examination of their witnesses, Section 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial court itself or to a court of appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same court or a court of superior jurisdiction.”

The same principle has been reiterated in **Shyamal Kumar Roy V. Sushil Kumar Agarwal, 2006 11 SCC 331** as under:

“16. The said decision, therefore, is an authority for the proposition that Section 36 would operate even if a document has been improperly admitted in evidence. It is of little or no consequence as to whether a document has been admitted in evidence on determination of a question as regards admissibility thereof or upon dispensation of formal proof therefor. If a party to the lis intends that an instrument produced by the other party being insufficiently stamped should not be admitted in evidence, he must raise an objection thereto at the appropriate stage. He may not do so only at his peril.

21. The appellant having consented to the document being marked as an exhibit has lost his right to reopen the question.

22. What was necessary was that the document should be marked in presence of the parties and they had an opportunity to object to the marking of the document. The question of judicial determination of the matter would arise provided an objection is taken as to what document is tendered in evidence and before it is marked as an exhibit in the case. Before the learned trial Judge, reliance was placed on a decision of a learned Single Judge of the Andhra Pradesh High Court in Vemi Reddy Kota Reddy v. Vemi Reddy Prabhakar Reddy [(2004) 3 ICC 832 (AP)] . In that case there was nothing on record to show that the document was marked as an exhibit

after an objection had been raised. The said case, therefore, has also no application to the facts of the present case.”

In view of above, there is no merit in this revision petition.
Hence, the same is dismissed.

April 02, 2018
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No