

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CRP (PD) NO.2163 OF 2019
AND CMP NO.13995 OF 2019

V.Murali

...

Petitioner

VS.

Savithiri K. Nambiar

...

Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decree dated 12.02.2019 made in I.A.No.803 of 2017 in O.S.No.26 of 2017 on the file of II Additional District Judge at Puducherry.

For Petitioner : Mr.T.M.Naveen
For Respondent : Mr.A.E.Ravichandran

ORDER

This Civil Revision Petition is filed against the order dismissing the petition filed under Order 13 Rule 3 and Rule 6 read with Section 151 of Civil Procedure Code for rejecting the exhibits marked in evidence.

2. The defendant is the petitioner before this Court. The respondent filed a suit for recovery of money on the basis of promissory notes. In order to prove her case, the respondent marked the promissory notes and another document as Exs.A3 and A4. At the time of marking, the petitioner / defendant did not make any objection and that he has not taken the defence that he has not borrowed any money. After the documents were marked, he had taken a stand that documents were insufficiently stamped and therefore, they are inadmissible in evidence. The petitioner / defendant opposed the interlocutory application on the ground that if there is any insufficient stamp duty, it can be cured by payment of sufficient stamp duty and penalty under Section 29 of the Indian Stamp Act, 1899. Considering the judgment of this Court **JAVER CHAND AND OTHERS VS. PUKHRAJ SURANA [1961 AIR (SC) 1655]** the Trial Court has held that it is not open to challenge the document after it has been admitted in evidence and the Courts cannot go behind that order. The evidentiary value of the document can be agitated during the course of the trial and appreciated by the Court at the time of passing judgment and accordingly dismissed the interlocutory application.

3. I have considered the submissions made on either side and perused the materials available on record.

4. Admittedly, the said documents were marked as Exs.A3 and A4 without any objections. It is open to the parties to object the marking of the documents and raise the issue inadmissibility and relevancy before marking the same. Once the document is marked and an endorsement is made by the learned Judge, it is not open to the parties to claim for rejection of the document.

5. The Hon'ble Supreme Court in **R.V.E.VENKATACHALA GOUNDER VS. ARULMIGU VISWESARASWAMI & V.P. TEMPLE AND ANOTHER [2003 (8) SCC 752]** has observed as under:

"19. 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 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.

20. *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."

6. In the considered opinion of this Court, once a document is admitted without any objection, its validity can be attacked during the course of the trial and the evidentiary value of the said document

can be tested at the time of passing the judgment. At this stage, after allowing the document to be marked, it is not open to the petitioner to seek for direction to reject the same. I do not find any infirmity in the order passed by the Trial Court.

7. In fine, the Civil Revision Petition is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

30.08.2019

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
TK

To

The II Additional District Judge
Puducherry.

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M.GOVINDARAJ, J.

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