

**RITU PODDAR NEE KANORIA VS. AMIT
PODDAR**

Mr. Aniruddha Chatterjee

Mr. Saptarshi Kr. Mal

Mr. Debabrata Roy

..for the petitioner

Mr. Probal Mukherjee

Mr. Kaushik Dey

Mr. Sutirtha Das

..for the opposite party

This revisional application has been filed by the respondent/wife in Matrimonial Suit No. 1913 of 2017, pending before the learned Additional District Judge, 7th Court, Barasat, District North 24 Parganas.

The petitioner is aggrieved by an order of rejection of an application filed by the petitioner to allow her to tender a photocopy of a letter written by the husband dated December 21, 2016 and have the same marked as an exhibit.

According to the learned Court below, the petitioner had failed to prove the circumstances under which the original was destroyed and/or lost from her custody and as such secondary evidence as envisaged under Section 65 of the Evidence Act could not be allowed by marking the said photocopy of the letter as an exhibit.

The learned Court below was further

persuaded by the fact that the document was shown to the opposite party at the time of his cross-examination and the opposite party denied his signature on the said document.

Mr. Chatterjee, learned Advocate appearing on behalf of the petitioner/wife submits that the petitioner had all along mentioned about the existence of the said letter in the written objection to the effect that the husband had written a detailed letter on December 21, 2016 containing certain issues with regard to the marriage and laid down certain terms and conditions. Thus, it is not a new case and/or afterthought which the petitioner wanted to bring into evidence by filing a photocopy of the letter. Mr. Chatterjee further submitted that the learned Court below could not have thrown out the said document at the threshold but should have admitted the said document, marked the same as an exhibit and the probative value of the said document could have been decided at the trial. He relied on the decision of the Hon'ble Apex Court in the matter of ***Bipin Shantilal Panchal Vs. State of Gujrat And Another reported in (2001) 3 SCC***, wherein the Hon'ble Apex Court observed that not allowing the document to be marked as an exhibit when an objection is raised, is an archaic practice and should be avoided in order to ensure speedy disposal of cases. Their Lordships were of the view

that it would be fair, just and also beneficial for disposal of cases, if the documents which are filed in Court was marked as an exhibit by making note of the objection raised by other parties.

The relevant paragraphs are quoted below :-

“13. It is an archaic practice that during the evidence-collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fallout of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or the revisional court, when the same question is recanvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.

14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds

at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view, there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)

15. The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence-taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is recanvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.”

Mr. Chatterjee also relied on the decision of ***Rakesh Mohindra Vs. Anita Beri reported in (2016) 16 SCC 483***, in which the Hon’ble Apex Court held that, just because a party was allowed to adduce secondary evidence, the same would not exonerate the party from the requirement of the law to prove the document and establish its probative value and the genuineness and correctness of the said document can be taken care of at the time of final hearing of the suit.

Mr. Mukherjee, learned Advocate appearing on behalf of the opposite party/husband submits that the husband had already denied the existence of such a document. That the wife had not been able to prove that the original was lost. That the learned Court below was not convinced with the explanation given by the wife with regard to loss of the original and once the learned Court below was not satisfied with the basis for tendering a document by way of secondary evidence, this Court in exercise of power under Article 227 of the Constitution of India should not interfere with the order impugned.

I have heard the rival contentions of the learned Advocates for the respective parties. In the written objection filed by the wife, there is elaborate discussion with regard to the letter dated December 21, 2016, a photocopy of which is sought to be tendered in evidence. In the application filed by the wife, it has been categorically mentioned that the original was destroyed by the husband by scratching out his signature but a photocopy was kept in a different place. That the photocopy was made and compared with the original and ought to be marked as an exhibit. Thus, the basic foundation which is required to be laid for production of the photocopy of the letter under Section 65 is available from the application. The probative value of the said document is not to be decided at the time of tender. The

wife will always be under an obligation to prove the document and contents thereof at the trial of the suit.

The order impugned is quashed and set aside to the extent of not accepting the photocopy of the document dated December 21, 2016. The learned Court below is directed to accept the photocopy of the said letter and mark the same as exhibit and also make a note of the objection of the husband on the said exhibit.

With the above observations, this revisional application is disposed of.

There will be however no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

(Shampa Sarkar,J.)