

29.01.2021
Sl. No. 18
srm

C.O. No. 194 of 2021

Mageba Bridge Products Private Limited

Vs.

M/s. Trade Centre

Mr. S.P. Mukherjee,
Mr. Manoj Kumar Tiwari,
Mr. Swarup Banerjee

...for the Petitioner.

Mr. Kasinath De,
Mr. Kaushik Chatterjee,
Mr. Suparno Ghosh

...for the Opposite Party.

Mr. De, learned Advocate, appears on behalf of the opposite party and accepts service of the revisional application in Court.

This revisional application has been filed by the defendant in Money Suit No.43 of 2011 pending before the learned Civil Judge (Senior Division), 9th Court at Alipore, South 24-Parganas. The petitioner is aggrieved by an order dated September 3, 2020 passed by the learned Court below rejecting an application under Section 151 of the Code of Civil Procedure seeking a direction from the Court to allow the defendant to rely upon the relevant contents and admissions made by the plaintiff's witness in another suit by producing certified copies of the deposition of the said witness in Money Suit No.44 of 2011 as also Money Suit No.41 of 2011.

The learned Court below rejected the application on the ground that the provisions of Section 33 of the Indian Evidence Act, 1872 does not envisage such a situation when the defendant could be allowed to rely on evidence of witness without the witness being allowed to be cross-examined by the adverse party.

Mr. Mukherjee, learned Senior Advocate appearing for the petitioner, submits that the learned Court below misdirected itself by placing reliance solely on the provisions of Section 33 of the Indian Evidence Act. Mr. Mukherjee submits that the depositions in a suit are public documents and the certified copies of the same are admissible in evidence, as such, there is no reason as to why the learned Court below could reject the application. Mr. Mukherjee further submits that the learned Court below failed to consider the provisions of Sections 17, 21 and 145 of the Code of Civil Procedure.

Mr. De, learned Advocate appearing on behalf of the opposite party, submits that the learned Court below rightly observed in the order impugned that the application could not be allowed in view of the observations of the Hon'ble Apex Court in the matter of Sashi Jena & Ors. vs. Khadal Swain & Anr. reported in (2004) 4 SCC 236. He relied on paragraph 8 of the said judgment, which is as follows:

“From a bare perusal of the aforesaid provision, it would appear that evidence given by a witness in a judicial proceeding or before any person authorised to take it is admissible for the purpose of proving in a subsequent judicial proceeding or in a later stage of the same judicial proceeding, the truth of the facts which it states in its evidence given in earlier judicial proceeding or earlier stage of the same judicial proceeding, but under proviso there are three prerequisites for making the said evidence admissible in subsequent proceeding or later stage of the same proceeding and they are: (i) that the earlier proceeding was between the same parties; (ii) that the adverse party in the first proceeding had the right and opportunity to cross-examine; and (iii) that the question in issue in both the proceedings were substantially the same, and in the absence of any of the three prerequisites aforesaid, Section 33 of the Act would not be attracted. This Court had occasion to consider this question in the case of V.M. Mathew v. V.S. Sharma in which it was laid down that in view of the second proviso, evidence of a witness in a previous proceeding would be admissible would be admissible under Section 33 of the Act only if the adverse party in the first proceeding had the right and opportunity to cross-examine the witness. The Court observed thus at AIR pp.110 and 111: (SCC p.125, para 8)

“8. The adverse party referred in the proviso is the party in the previous proceeding against whom the evidence adduced there was given against his interest. He had the right and opportunity to cross-examine the witness in the previous proceeding.....*the proviso lays down the acid test that statement of a particular witness should have been tested by both parties by examination and cross-examination in order to make it admissible in the later proceeding.* (emphasis added)”

I have heard the learned Advocates of the respective parties and I have gone through the provisions of law.

I do not have any quarrel with the proposition of Section 33 of the Indian Evidence Act as laid down by the learned court below. The defendant sought a direction from the Court to allow the defendant to rely on documents which were evidence in another suit. The prayers in the said application may have led the learned court to pass the order impugned.

Where the learned court erred is that the court should have allowed the certified copies of the depositions be filed and tendered and the admissibility of the same could be decided at the trial. Depositions in another suit are public documents and the records are maintained by the Court. The defendant always has the liberty to take appropriate steps under the law for production and proof of those public documents in terms of the Indian Evidence Act. Reliance may be placed on the same in accordance with law. The defendant is allowed to file the said documents which will be marked as exhibits. Admissibility, probative value and relevance of the same will be decided at the state of arguments. Such documents be filed on the next date. The order impugned is set aside. Mere marking of documents ipso facto does not dispense with proof of the same.

There is already a direction of this Court for expeditious disposal of the suit. This Court expects that the parties will co-

operate with the case so that the suit can be disposed of expeditiously and the learned Court below shall not give any unnecessary adjournments to either of the parties.

This revisional application is, thus, disposed of.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)