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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2650 OF 2020

Shri Satya Gopal (I.A.S.)

.... Petitioner.

V/s

Satish Banwarilal Sharma

.... Respondent

Mr. Subir Kumar a/w Mr. Rahul Sinha and Prerna Gandhi i/b DSK
Legal for the Petitioner.

Mr. Kamallesh P. Mali for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: MARCH 1, 2021

P.C.:-

1] This Petition is by the Defendant to the suit being S.C. Suit No.8 of 2012 pending on the file of Civil Judge, Senior Division, Daman in which Application-Exhibit-48 moved by original Plaintiff/Respondent for permission to produce Compact Disk ("CD") containing video footage of the alleged incident of defamation came to be allowed.

2] Facts necessary for deciding the Petition are as under:-

3] It is the case of the Respondent/Plaintiff that on 19/07/2010 in press conference addressed by Central Home Minister, Petitioner has defamed him resulting into filing of the suit being S.C. Suit No.8 of 2012 for damages. The said suit was resisted by the Petitioner and after issues are framed, trial has commenced on 13/08/2014. The Respondent, in view of provisions of order 18 Rule 4 and 5 submitted affidavit of oral evidence alongwith list of documents to be relied on so as to substantiate the allegations made in the suit. Application-Exhibit-48 for production of CD and application-Exhibit-50 for production of certificate under Section 65-B of the Evidence Act came to be moved by the Respondent which was objected to by the Petitioner. The said application-Exhibit-48 came to be allowed vide order dated 29/07/2016.

4] The said order was set aside by this Court on 27/01/2017 at the behest of the Petitioner in Writ Petition No.11425 of 2016 with directions to the learned Trial Court to decide the said application-Exhibit-48 afresh by giving detail reasons in support of the order.

5] The Trial Court vide order dated 19/09/2018 allowed the application-Exhibit-48 permitting production of CD.

6] The Petitioner thereafter moved an application seeking recalling of Order dated 19/09/2018 which was recalled vide Order dated 11/12/2019. The said application-Exhibit-48 was heard afresh and vide order dated 17/01/2020, application-Exhibit-48 came to be allowed. As such, this Petition.

7] While questioning the order impugned, learned Counsel for the Petitioner would urge that the Respondent has failed to provide sufficient reasons for non-production of the CD and certificate under Section 65-B of the Evidence Act at the time of filing of suit or alongwith examination-in-chief. Said evidence is sought to be produced at belated stage after amendments were permitted i.e. after commencement of the trial. He would claim that since the suit claim is based on the incident of 19/07/2010 and evidence in the form of CD is produced after six years, hence there is doubt about authenticity of CD. According to the learned Counsel, when the Petitioner has

placed on record his affidavit of evidence after issues were framed at Exhibit-15, there is no reference to the aforesaid electronic evidence i.e. CD and the certificate under Section 65B of the Evidence Act. As such, he would claim that aforesaid attempt on the part of the Respondent/Plaintiff is to take the present Petitioner by surprise and to strengthen the case without any support of law. By inviting my attention to the judgment of the Delhi High Court in the matter of *Gold Rock World Trade Ltd vs. Veejay Lakshmi Engineering Works Ltd.* reported in **2007 SCC OnLine 1140** submissions are, if there is no reference to the document which is produced at much belated stage i.e. after commencement of trial, in the affidavit of witness, and if it can be established that the party concerned, like the Respondent in this case, was aware about existence of such document, Respondent has failed to produce the same at appropriate stage in spite of due diligence, same cannot be permitted to be produced at later stage. As such, according to the learned Counsel for the Petitioner, the order impugned is not sustainable.

8] The learned Counsel for the Respondent would support the order impugned. He would urge that even if examination-in-chief of

the Respondent is placed on record, recording of evidence is yet to commence and that being so, no prejudice is caused to the Petitioner.

9] I have considered rival submissions.

10] By detail impugned order dated 17/01/2020, Respondent is permitted to place on record CD in exercise of powers under Order 7 Rule 14 of the CPC. As far as claim of the Petitioner that there is doubt about genuineness of the aforesaid CD is concerned, same cannot not be gone into at the stage of its production, as the Petitioner will get every chance to cross-examine the Plaintiff and the witness from whose custody the said document has been produced. Apart from above, fact remains that even if trial has commenced, it is at very initial stage i.e. Plaintiff/Respondent has submitted his affidavit of examination-in-chief. As such, Petitioner will have every opportunity to meet the said piece of evidence at the time of cross-examination of the Plaintiff and his witnesses.

11] The aforesaid CD was not produced at the time of filing of the affidavit of the Respondent as the document was in possession of some

other Reporter. It is claimed by the Respondent that he was expecting that the said Reporter would produce the same. It is further claimed by him that after advocate's advice, he could pursue the said Reporter to handover copy of the CD and certificate under Section 65-B of the Evidence Act.

12] Apart from above, Court is required to be sensitive to the pleadings about existence of CD i.e. para 20 of the Complaint and it cannot be said that the Petitioner is taken by surprise or at the threshold the Petitioner can doubt very genuineness of the said CD. The certificate under Section 65-B of the Evidence Act can be produced even at later stage after production of electronic evidence i.e. CD.

13] In the aforesaid backdrop, I see no reason to cause any interference in the order impugned, particularly when likely prejudice is not demonstrated by the Petitioner. Reliance placed by the Petitioner on the judgment of the Delhi High Court in the matter of *Gold Rock World Trade Ltd* cited supra will be of hardly any assistance as it can be noticed that in the Complaint there is reference to the existence of CD.

14] In the aforesaid backdrop, no case for interference is made out.
Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)