

15.11.2022
Item No.4
Ct. No.7
CHC
(disposed of)

C.O.552 of 2022

Smt. Bandana Dey
Vs.
Sri Ramgopal Dey & ors.

Mr. Kushal Chatterjee,
Mr. Debrup Choudhury
...for the petitioner

Mr. Partha Pratim Roy
...for the opposite parties

Subject-matter of challenge in this case is against the order dated 7th March, 2022, passed by learned Civil Judge (Junior Division), at Bidhannagar in Title Suit No.367 of 2011, declining to mark the photo copy of an agreement for sale, dated 7th May, 2008, as exhibit.

Mr. Kushal Chatterjee, learned advocate appearing for the petitioner/defendant taking recourse to the provisions of Section 65(b) and (c) of Indian Evidence Act, 1872, submits that the court below, while declining to mark photocopy of an agreement for sale as exhibit, has not considered the provisions engrafted in Section 65(b) and (c).

The photocopy of an agreement for sale has been sought to be marked exhibit on the ground of non availability of original agreement for sale, for the same

being lost or destroyed by any means with knowledge of the petitioner/defendant.

Mr. Chatterjee, candidly submits that existence of such agreement for sale is not at all denied in the pleadings already submitted. It is nobody's case that photocopy of the agreement, sought to be marked exhibit was not at all executed.

Upon referring such submission Mr. Chatterjee, submits that when existence of execution of agreement for sale is not at all disputed, such photocopy of the document could have been marked exhibit in application of the provisions of Section 65(b) and (c) of the Indian Evidence Act.

Per contra, Mr. Roy, learned advocate disputing with the submission of Mr. Chatterjee replies that since it is a suit for eviction of licensee, the photocopy of the document, sought to be marked exhibit has no relevant nexus for the determination of the matter in controversy between the parties.

It is further contended by Mr. Roy that upto now there is nothing disclosed in the written statement seeking enforcement of agreement for sale.

Mr. Roy, learned advocate appearing for the opposite parties, however, candidly concedes that there has been execution of agreement for sale, and the document sought to be marked exhibit, is not available in his custody.

The admissibility of the document, its relevancy together with its probative value are grossly challenged by Mr. Roy alleging further that it would be a redundant exercise to mark photocopy of the document exhibited, which has even no remote relevance with the matter in controversy between the parties.

Having considered the submission of both sides, it appears that both the parties in this case denied possession each of an agreement for sale, the photocopy of which has been sought to be marked exhibit. It is also admitted position that there has been execution of an agreement for sale. In a situation like this, the court below ought to have taken into account the provisions engrafted in Section 65(b) and (c) of the Indian Evidence Act, which may be set out hereinbelow:-

“65(b): when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;”

A bare reading of Section 65(b) together with (c) of Indian Evidence Act makes it abundantly clear that when existence, condition or contents of a document, if admitted in writing, the secondary evidence may be permitted to be adduced. More so, such document if lost for whatever may be the reasons, the secondary evidence may also be permitted to be adduced. When the existence of an agreement for sale is neither disputed nor doubted by any of the parties to this case, and when the document is not in existence, which is the admitted case of either of the parties to this case, the court below ought to have considered the provisions of Section 65(b) and (c) of Evidence Act, afresh in accordance with the law.

The revisional application for the reasons mentioned hereinabove is disposed of upon setting aside the impugned order dated 7th March, 2022 with a direction upon the court below to hear out the application afresh before the end of January, 2023 in accordance with law, providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

The relevancy of such document together with the admissibility and probative value of such document, sought to be marked exhibit, may be considered at the final hearing of this case, and the opposite parties are

given liberty to agitate all such points at the time of final hearing of this case, and if such point is raised that may be resolved by the court below in accordance with law.

Since the pending litigation has reached the stage of argument, it is, however, clarified that logical conclusion of the suit may be reached before end of April, 2023 in accordance with law.

Parties are directed to communicate this order to the court below.

With this observation/direction, the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)