



C.R.P.No.3030 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.09.2022

PRONOUNCED ON : 18.10.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3030 of 2022

and

C.M.P.No.16360 of 2022

1.Venkatesh Coke and Power Limited,
Represented by its Director,
Mr.Ravi Agarwal,
No.6926A/D1, Chandrawal Road,
New Delhi-110 007.

2.Ravi Agarwal

.. Petitioners

Vs.

1.M/s.Otto India Private Limited,
No.32, Ezra Street, 7th Floor,
Kolkata-700 001.
By the Transferee of the Decree
M/s.Papthi Reals,
No.139, T.H.Road, Chennai-600 019.
Represented herein by its partnership
Mr.V.Baskaran.

2.Rahul Swarup

3.Manju Swarup

.. Respondents



C.R.P.No.3030 of 2022

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, pleaded to set aside the Fair Order and Decreetal Order in E.A.No.15 of 2022 in E.A.No.6 of 2021 in E.P.No.128 of 2017 in Calcutta High Court C.S.No.196 of 2005 dated 11.08.2022 on the file of the 1st Additional District Judge at Thiruvallur and to dismiss the said application with costs throughout.

For Petitioners : M/s.Ravi Kumar Paul, Senior Counsel
for M/s.M.V.Seshachari

For Respondents : M/s.A.Navaneetha Krishnan, Senior Counsel
for M/s.Jai Shankar Srinivas Caveator for R1.

ORDER

Aggrieved by an order allowing a petition to lead oral evidence and mark documentary evidence in a review application, the petitioner has come up by way of this revision.

2. The 1st respondent herein is a transferee decree holder in C.S.No.196 of 2005 on the file of the High Court of Calcutta. The 1st respondent herein filed Execution Petition against the revision petitioners and other respondents in E.P.No.128 of 2017. In the said Execution Petition an exparte order was



C.R.P.No.3030 of 2022

passed against the revision petitioners on 22.10.2008, thereafter the revision petitioners filed an application to set aside the exparte order in E.A.No.48 of 2017. The said E.A.No.48 of 2017 was allowed by the Executing Court by order dated 18.11.2020. Aggrieved by the said order, the 1st respondent herein filed a review petition in E.A.No.6 of 2021 seeking to review the order dated 18.11.2020 passed in E.A.No.48 of 2017. In the said review application, the 1st respondent filed a petition in E.A.No.15 of 2022 seeking leave of the Court to lead oral evidence and mark documents in E.A.No.6 of 2022. Precisely it was the case of the 1st respondent that in a petition to set aside the exparte order filed by the revision petitioners in E.A.No.48 of 2017, he (1st respondent) marked Exs.R1 to R23 without examining any witnesses. Therefore, he wants to mark said documents in review application by leading oral evidence. The relevant averment of the 1st respondent in paragraph 21 of the affidavit filed in E.A.No.15 of 2022 is as follows:

“21. I humbly state that on the side of the decree holder in E.A.No.48 of 2017, without examining any witness, Exhibits R1 to R23 have been marked. Now, I want to mark the above said Exhibits R1 to R23 on the side of the decree holder by filing proof affidavit and providing copy of the same to the other side and examining myself orally by getting into the witness box.”



C.R.P.No.3030 of 2022

The reading of extract of the 1st respondent's affidavit would make it clear that at the time of contesting the petition to set aside the exparte order filed by the revision petitioner, he failed to lead oral evidence and mark his documents namely R1 to R23 through witness. Now to cure the defect in his review application, he wants to lead oral evidence and mark those documents again through witness. The said application was allowed by the Court below and aggrieved by the same the petitioners are before this Court by way of revision.

3. The learned senior counsel for the petitioners assailed the order passed by the Court below mainly on the ground that leading of oral evidence and marking of documents already marked in a review petition is unknown to law and it would enlarge the limited scope of the review application. The learned counsel for the petitioner relied on the judgment reported in ***MANU/SC/1013/2022, S.Madhusudhan Reddy versus V.Narayana Reddy and Ors.***, for explaining the limited scope of the review jurisdiction.



C.R.P.No.3030 of 2022

4. The learned senior counsel for the respondents vehemently contended by taking this Court to Rule 143 and 147 of Civil Rules of Practice, the documents cannot be admitted in evidence without it is being proved by a competent witness. According to the learned senior counsel, in the case on hand, neither the revision petitioners nor the contesting 1st respondent marked documents by leading oral evidence at the time of enquiry of E.A.No.48 of 2017, which was filed by revision petitioners to set aside the exparte order passed in main E.P. Therefore, in order to cure the defect, the 1st respondent filed the instant application seeking leave of the Court to lead oral evidence and mark his documents namely Exs.R.1 to R23 through the witnesses. According to the learned senior counsel, the Court below rightly allowed the said application and it requires no interference from this Court. The learned senior counsel further relied on the judgment of the Hon'ble Apex Court in ***Civil Appeal No.7764 of 2019 (Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors versus Tuticorin Educational Society & Ors)*** and the judgment of the Hon'ble Apex Court in ***Civil Appeal No.4113 of 2022 (Mohamed Ali versus V.Jaya & Ors.)*** for the proposition a Civil Revision Petition is not maintainable when the revision petitioner has



C.R.P.No.3030 of 2022

effective remedy under the Civil Procedure Code by way of appeal or otherwise.

5. Heard the arguments of the learned senior counsel for the petitioners and that of the learned senior counsel of the respondents and perused the typed set of papers.

6. The short question that arises for consideration in this revision is whether the 1st respondent is entitled to lead oral evidence and mark the documents which were already marked without leading oral evidence in the proceedings sought to be reviewed (E.A.No.48 of 2017). Admittedly, the documents sought to be marked by the 1st respondent in this review application were already marked in E.A.No.48 of 2017. The 1st respondent in his petition seeking leave of the Court to lead oral evidence, as mentioned above, specifically averred that Exs.R.1 to R.23 have been marked in E.A.No.48 of 2017 without examining any witnesses and therefore he wants to mark those documents again by examining competent witnesses. Therefore it is clear, the 1st respondent wants to cure the said defect by leading oral



evidence in review application. As far as review application is concerned, the scope is very very limited. In review application, the Court is only concerned with the correctness of its own decision based on the evidence already available on record. It is also settled law that the earlier order can be reviewed only if there is any error apparent on the face of record. While considering the review application, Court cannot scrutinize the evidence closely and re- appreciate the same as in the case of appeal. In the case on hand, the 1st respondent who failed to lead oral evidence and mark documents through competent witnesses wants to cure those defects by leading oral evidence. It would amount to seeking re-trial or re-hearing of the case. The limited scope of review jurisdiction does not permit such a course.

7. It is settled law if a document is marked without any objection as to proof of document, any objection as to sufficiency or absence of proof cannot be raised later. In this regard, it is useful to refer to the observation of the Hon'ble Apex Court in the case law reported in **2003 (8) SCC 752** in **[R.VE.Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P.Temple and another]**, which reads as follows:



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“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 above said 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



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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 herein above, 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.

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21. Privy Council in Padman and Others vs. Hanwanta and Others [AIR 1915 PC 111] did not permit the appellant to take objection to the admissibility of a registered copy of a will in appeal for the first time. It was held that this objection should have been taken in the trial court. It was observed:

"The defendants have now appeal to the Majesty in Council, and the case has been argued on their behalf in great detail. It was urged in the course of the argument that a registered copy of the will of 1898 was admitted in evidence without sufficient foundation being led for its admission. No objection, however, appears to have been taken in the first court against the copy obtained from the Registrar's office being put in evidence. Had such objection being made at the time, the District Judge, who tried the case in the first instance, would probably have seen that the deficiency was supplied. Their lordships think that there is no substance in the present contention."



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22" Similar is the view expressed by this Court in P.C.Purushothama Reddiar vs. S.Perumal [1972 (2) SCR 646]. In this case the police reports were admitted in evidence without any objection and the objection was sought to be taken in appeal regarding the admissibility of the reports. Rejecting the contention it was observed: "Before leaving this case it is necessary to refer to one of the contention taken by Mr. Ramamurthi, learned counsel for the respondent. He contended that the police reports referred to earlier are inadmissible in evidence as the Head-constables who covered those meetings have not been examined in the case. Those reports were marked without any objection. Hence it is not open to the respondent now to object to their admissibility see Bhagat Ram V. Khetu Ram and Anr. [AIR 1929 PC 110]."

23. Since documents A30 and A34 were admitted in evidence without any objection, the High Court erred in holding that these documents were inadmissible being photo copies, the originals of which were not produced.

The Hon'ble Apex Court expressed similar view in the case law reported in 2004 (4) CTC 226 in [Smt.Dayamathi Bai Vs. Sri.K.M.Shaffi], the relevant observation of the Hon'ble Apex Court is as follows:



C.R.P.No.3030 of 2022

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“We do not find merit in this civil appeal. In the present case the objection was not that the certified copy of Ex.P1 is in itself inadmissible but that the mode of proof was irregular and insufficient. Objection as to the mode of proof falls within procedural law. Therefore, such objections could be waived. They have to be taken before the document is marked as an exhibit and admitted to the record (See: Order XIII Rule 3 of Code of Civil Procedure)”

8. In the case on hand in E.A.No.48 of 2017 the revision petitioners marked five documents Exs.P.1 to P.5 and 1st respondent marked marked 23 documents Exs.R.1 to R.23 without leading any oral evidence. At the time of marking documents, there was no objection with regard to the proof of those documents. Therefore, absence of proof or insufficiency of proof cannot be raised subsequently that too in a review proceedings. Therefore, this Court feels the petition filed by the 1st respondent seeking leave of the Court to lead oral evidence to mark Exs.R.1 to R.23 again through a competent witness is not at all warranted and it also falls outside the narrow scope of review jurisdiction. Therefore, I am constrained to interfere with the order passed by



C.R.P.No.3030 of 2022

the Court below which will have an effect of broadening the scope of review jurisdiction. Certainly, the order passed by the Court below suffers from error of jurisdiction and consequently liable to be set aside.

9. The learned senior counsel for the respondents relied on the judgment reported in the judgment of the Hon'ble Apex Court in ***Civil Appeal No.7764 of 2019 (Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors versus Tuticorin Educational Society & Ors)*** and the judgment of the Hon'ble Apex Court in ***Civil Appeal No.4113 of 2022 (Mohamed Ali versus V.Jaya & Ors.)*** for the proposition that when alternative remedy is available in C.P.C., no revision will lie under Article 227 of the Constitution of India. There is no quarrel with the above proposition submitted by the learned senior counsel. As far as this case is concerned, there is no appeal remedy available to the revision petitioners as against the impugned order. Hence in the absence of any appeal remedy under C.P.C, the Civil Revision Petition under Article 227 of the Constitution of India is very much maintainable especially when order impugned in the revision suffers from error of jurisdiction.



C.R.P.No.3030 of 2022

S.SOUNTHAR, J.

Jai

10. Accordingly, this Civil Revision Petition is allowed by setting aside the fair and decreetal order passed by the Court below in E.A.No.15 of 2022. In the facts and circumstances of the case there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

18.10.2022

Index: Yes/ No
Speaking Order / Non-Speaking Order
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To

The 1st Additionall District Judge,
Thiruvallur.

C.R.P.No.3030 of 2022

18.10.2022