

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.3750 OF 2023
IN
WRIT PETITION NO.1208 OF 2020

Mr. Cyrus Keki Balsara ...Applicant

IN THE MATTER OF

Mr.Cyrus Keki Balsara ...Petitioner

Versus

M/S. Ghatlia Textile And
Engraving Works And Ors ...Respondents

Mr.Vishal Kande a/w Mr.Shlesha Sheth, Ms.Kalyani Deshmukh
i/b FXB & Associates, for the Applicant/Petitioner.

Mr.Girish Godbole, Sneior Advocate a/w Mr.Atharva Dandekar
i/b M/s.Dastur Kalambi & Associates, for Respondent Nos.1 and
2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 18 APRIL 2023

P.C:-

. By this Application, the Applicant is praying for
modification of the order passed by this Court dated 6 March
2023 in Writ Petition No.1208 of 2020.

2. It is contention of the learned counsel for the
Applicant that this Court has partly allowed the Writ Petition

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filed by the Applicant-Petitioner. In the order, this Court has relied on the judgment of the Hon'ble Apex Court in the case of ***Bipin Shantilal Panchal V/s. State of Gujrat***¹, and on that basis this Court has directed the Trial Court to record the objected portion of examination-in-chief of DW-1 and permit the Applicant-Petitioner to cross-examine DW-1 on this portion and decide legality of this objected portion at the time of final hearing.

3. The learned counsel further submits that the Hon'ble Apex Court in the case of ***Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re V/s. State of Andhra Pradesh and Others***², has considered the ratio laid down in Bipin Shantilal Panchal (Supra) case and has held that the Presiding Officer should decide objections to questions during the course of the proceedings or failing it at the end of the deposition of the witness concerned. Hence, requested to modify the order as per ratio laid down by the Hon'ble Apex Court in the case of Criminal Trials Guidelines (Supra).

4. It is contention of the learned counsel for the Respondent Nos.1 and 2, the Application filed by the Applicant for modification of order is not maintainable, it should be Review Application as Applicants wants to give direction to the Trial

1 2001 (3)-SCC-1

2 2010-SC-598

Court on the basis of the judgment of Hon'ble Apex Court.

5. The learned counsel further submits that the judgment on which the Applicant is relying is in respect of the Criminal Trial. The Applicant wants to make correction in the operative order, it should be by way of review and not by modification of order. Hence, requested to dismiss the Application.

6. I have heard both learned counsel.

7. This Court by order dated 6 March 2023 has disposed of the Writ Petition filed by the Applicant at that time the learned counsel for Respondent Nos.1 and 2 has relied on judgment of Bipin Panchal (Supra) and on that basis this Court has given direction to decide the objection at that time of final hearing of the matter.

8. The learned counsel for the Applicant fairly submits that when this Court passed order at that time the Applicant was not aware about the judgment of Hon'ble Apex Court which the Applicant is relaying today.

9. In my view in the case of *Criminal Trial Guidelines* (Supra) the Hon'ble Apex Court has considered the ratio laid

down in *Bipin Panchal (Supra)* and specifically mentioned that the objection should be decided during the course of the proceedings or failing at the end of the deposition of the witness concerned. Now question remains whether the Application filed by the Applicant is maintainable or not as it is contention of the learned counsel for Respondent Nos.1 and 2 it should be Review Application.

10. In my view, the question raised by the learned counsel for the Applicant cannot be considered as Review as there is no partial error in the order passed by this Court, in which this Court had directed to decide the objection at the time of the final hearing on the basis of the judgment of *Bipin Panchal (Supra)*. Now on the basis of the judgment of *Criminal Trial Guidelines (Supra)*, this Court has to give direction to decide the said objection during proceedings or after the deposition of the said witness.

11. In view of above, I pass following order.

ORDER

- (i) The Application is allowed.
- (ii) The order passed by this Court dated 6 March 2023 is modified as under :-

“The Trial Court shall record the objected

portion of the examination-in-chief of DW-1 as mentioned by the Petitioner and permit the Petitioner to cross-examine DW-1 on this portion.”

(iii) The Trial Court shall decide the legality of this objected portion, during the course of the proceedings or failing it at the end of the deposition of the witness concerned.

12. At this stage, the learned counsel for Respondent Nos.1 and 2 submits that the Trial Court has already recorded the objected portion. Hence, it's legality be decided at the end of the deposition.

13. The learned counsel for the Applicant has agreed for it.

14. I make it clear that this arrangement is done only for witness DW-1, if any next witness is examined by defense the Trial Court shall decide as per observed earlier and in accordance with law.

15. The learned counsel for Respondent Nos.1 and 2 submits that the suit is pending since 2003, hence it be

expedited.

16. The learned counsel for the Applicant consented for it.

17. Considering the submissions, the learned Trial Court is requested to decide the pending suit as early as possible within six months from the receipt of the order.

(SHIVKUMAR DIGE, J.)