

14.03.2024

Sl. 139

Ct.No. 652

Amalranjan

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. NO. 4094 of 2017

Aloke Kumar Dey

Vs.

Somnath Das

Mr. Nilanjan Bhattacharjee

Mr. Arpan Guha

Mr. Saikat Dey

...for the petitioner/defendant

The track report regarding postal endorsement about service upon the opposite party is taken on record.

The opposite party is not represented.

The opposite party herein as plaintiff filed a suit for eviction against the defendant being Title Suit no. 242 of 2012 on the ground of reasonable requirement, default etc.

The petitioner herein as defendant filed written statement in the said suit denying allegations made in the plaint. It is further case of the petitioner/defendant that the plaintiff landlord during pendency of the suit filed an application for amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure contending that since purchase the first floor of the suit holding and the roof thereof covered by asbestos shed are being utilised by him for

letting the same for occasional ceremonies and the plaintiff has the trade licence since 2009 in the name of his wife. Such prayer for amendment was turned down by the learned court below and the said statement was not allowed to be incorporated in the plaint by way of amendment as trial has commenced and plaintiff failed to prove the case of due diligence.

PW 2, namely, Silpi Das, while filed her affidavit-in-chief has mentioned about the said trade licence and the court below has marked the said document as exhibit by the order impugned.

Mr. Nilanjan Bhattacharjee, learned counsel appearing on behalf of the petitioner submits that the learned court below has misjudged the situation by allowing the said document to be marked as an exhibit which is not part of the plaint. He ought to have considered, as amendment of plaint was rejected the same would be infructuous if adducing such evidence is allowed. The witness did not have any scope to produce the said document during evidence and court ought not to have marked it as an exhibited document.

In fact, the learned court below has exercised its jurisdiction illegally and with

material irregularities in passing the order impugned and as such the order impugned is liable to be set aside.

I have considered the submission made by the petitioner.

While considering the prayer made by the petitioner, I am not unmindful of the fact that the learned court below by its earlier order has rejected the plaintiff's prayer for amendment to the effect that he is using a part of the suit holding for the purpose of occasional ceremonies and for that purpose he has trade licence in the name of witness herein, but learned court below while passing the order impugned has made a clear observation that though the document has been marked as exhibit but the probative value of the said document would be adjudicated at the time of final hearing of the suit. He has clearly noted that he has marked the said document as exhibit with objection, which means that the defendant tenant will have the scope to contradict the said document.

In a catena of decisions it is well established that mere marking of a document as an exhibit does not dispense with its proof, which is required to be done in accordance with law. In fact making endorsement on a document as

exhibit has no relation in its proof. In *Sudhir Engineering Company Vs. NEEPCO Roadways Ltd.* 1995 SCC Online Del 251, Delhi High Court held that neither the marking of an exhibit number can be postponed till the document has been held proved, nor the document can be held to have been proved merely because it has been marked as an exhibit.

In *Bipin Shantilal Panchal Vs. State of Gujrat & Another*, the Apex Court has laid down the practice as better substitute in such cases observing that whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence, the Trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case, subject to objection to be decided at the last stage in the final judgement. If the court finds at the final stage that the objection so raised is sustainable, the Court can keep such evidence excluded from consideration.

In such view of the matter, I do not find any illegality or impropriety in the order impugned. However, as decided by the learned court below that the marking of the said document as exhibit will not preclude the court below to consider its

probative value as well as sustainability of the document at the time of final adjudication of the suit.

C.O. 4094 of 2017 is, accordingly, disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties taking all legal formalities.

(Ajoy Kumar Mukherjee,J.)