

Before Nirmaljit Kaur, J.

SANJEEV KUMAR—*Petitioner*

versus

SHRI DIGAMBER JAIN PANCHAYAT MANDIR—*Respondent*

CR No.9129 of 2017

September 04, 2019

Code of Civil Procedure, 1908—O.13, Rl.3—Objections with respect to admissibility of documents—Whether objection with respect to admissibility of document required to be decided before endorsement or can be decided even at a later stage, it would be appropriate to refer to Order 13 Rule 3 CPC—Held, objection should normally be decided there and then but failure to do so, and decision to decide at final stage, cannot be set aside in view of objection being only with respect to its admissibility.

Held that, the objection should normally be decided there and then but failure to do so, and decision to decide at the final stage, cannot be set aside in view of an objection being only with respect to its admissibility as held by the above judgments as also in view of the Order 13 Rule 3 CPC.

(Para 14)

Nitin Jain, Advocate,
for the petitioner.

Vivek Sheoran, Advocate,
for the respondent.

NIRMALJIT KAUR, J.oral

(1) The present revision petition has been filed against the order dated 20.11.2017 passed by the Rent Controller, vide which, the application of the petitioner dated 20.11.2017 seeking the decision of the objection with respect to the admissibility of the documents was dismissed.

(2) The respondent has filed eviction petition seeking possession of the petitioner from Shop No.7 situated at Jahajpul, Mill Road, Hisar, on the ground that the respondent requires the demised premises for its own use and occupation. In the said eviction petition, it was pleaded that the rent of the demised premises is ` 2,125/- per

month. The petitioner filed his written statement, wherein he, *inter alia*, pleaded that the respondent is only interested in increasing the rent and the present petition seeking eviction of the shop, which is in possession of the petitioner, is only to create pressure upon the petitioner herein to increase the rent.

(3) The Rent Controller framed issues vide order dated 22.5.2017 and the case was fixed for 7.7.2017 for plaintiff's witnesses. Sh. Brij Bhushan alleged Manager of respondent stepped into the witness box as PW-1 and during the course of his examination on 2.11.2017, he tendered into evidence Ex.P1 to P-4. The case was deferred to 15.11.2017 for cross examination of the said witness. On 15.11.2017, the petitioner filed an application for deciding his objection with regard to admissibility of documents Ex.P-1 to P-4 produced by PW-1 Brij Bhushan. In the application, it was stated that the said documents are not admissible as Brij Bhushan is neither the scribe nor these documents were executed before him. No order was passed on the application dated 15.11.2017. Since, there was no order passed on the application dated 15.11.2017, the petitioner filed yet another application dated 20.11.2017 requesting the Rent Controller to decide the objection before recording cross-examination of PW-1. In the said application, reliance was placed upon various judgments, vide which, it has been held that the objection is to be decided when the same is taken and should not be kept pending at the stage of final arguments. The said application was, however, disposed of with observations that the same shall be decided at the time of final hearing.

(4) While praying for setting aside the order dated 20.11.2017, learned counsel for the petitioner submitted that the application of the petitioner was dismissed by the Rent Controller by passing the impugned order dated 20.11.2017 without issuing notice to the opposite party or calling for its reply. Secondly, the application has been dismissed while relying on the judgment of Hon'ble the Apex Court rendered in the case of *Bipin Shantilal Panchal* versus *State of Gujrat and another*¹ without realizing that the said judgment pertains to a criminal case, where the procedure is governed by the Code of Criminal Procedure. Thirdly, the issue in hand that decision on the objection has to be taken at the time when the same is raised and it cannot be postponed till the final decision, is no more *res integra*, being covered by the judgment of the Hon'ble the Apex Court rendered in the

¹ (2001) 3 SCC 1

case of ***RVE Ventakachala Gounder*** versus ***Arulmigu Viswesaraswami & V.P. Temple***². It was, therefore, contended that the Rent Controller was obliged to pass the reasoned order on the first application dated 15.11.2017 and further the imposition of costs while dismissing the application dated 20.11.2017 was also arbitrary.

(5) On the other hand, learned counsel for the respondent while vehemently opposing the revision petition and supporting the impugned order submitted that as per Order 13 Rule 3 CPC, the Court was at liberty to reject a document which is inadmissible, at any stage, and it was not mandatory to decide the same before the endorsement or the said document was signed.

(6) Learned counsel for the parties were heard at length.

(7) The judgment rendered by the Hon'ble Apex Court in the case of ***RVE Ventakachala Gounder*** (supra) and as relied upon by learned counsel for the petitioner was in fact in the situation where the objection had not been raised at all and the petitioner therein chose to raise objection at a later stage. It was, therefore, in those circumstances that the Court clarified that in case the objection pertains to its admissibility, then the same could be raised at any stage, and in case the same was qua the mode and procedure, then it was required to be raised at the time when the document was produced in evidence. The Hon'ble Apex Court in that case, therefore, answered the question of prime importance as to the stage of raising the objection raised by a party to the admissibility of the document exhibited by the witnesses by holding in para 19, as under:-

“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 abovesaid 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

² 2003(4) RCR (Civil) 704

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 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 hereinabove, 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.”

(8) The said judgment refers to the stage of raising objection but in order to adjudicate on the question as to whether the objection with respect to the admissibility of the document is also required to be decided before the endorsement or can be decided even at a later stage, it would be appropriate to refer to Order 13 Rule 3 CPC, which is reproduced as under:-

“Rejection of irrelevant or inadmissible document:- The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.”

(9) Thus, the Hon'ble Apex Court in the case of *RVE Ventakachala Gounder* (supra) while distinguishing the case of *Roman Catholic Mission* versus *The State of Madras and another*³ clarified that the objections to the admissibility of the document can be classified into two situations. In case the document was inadmissible, the said objection could also be raised at a later stage even in appeal or revision, but in case, the objection was qua the procedure adopted for proving the document, then in that case the objection could not have been raised at a later stage. Further, the perusal of the Order 13 Rule 3 CPC also shows that the Court too has the liberty to decide the same at any stage.

(10) *Ventakachala Gounder* (supra) and *Bipin Shantilal Panchal* (supra), this Court has to ascertain as to whether the objection raised by the petitioner qua the document was with respect to its admissibility or on account of the procedure and mode of proof for which we need to refer the application and the present grounds of revision. A perusal of the application as well as the grounds of revision placed on record shows that the objection was 'qua the admissibility of the document' as it was stated to be neither signed nor executed by Brij Bhushan Jain, who sought to produce the same while examining himself as PW-1. If it is so, then it is evident that the objection falls in category (i) out of two categories specified by Hon'ble the Apex Court, allowing the objection to be raised any time and simultaneously Order 13 Rule 3 CPC grants same liberty to the Court to decide the said objection at any time.

(11) In view of the above, no fault can be found with the order of the trial Court holding that the said objection shall be decided at the

³ AIR 1966 SC 1457

stage of final arguments, nor is anything before this Court to conclude that it was mandatory to decide such an objection of inadmissibility of document there and then, although, it may be good and better to decide the objection promptly in certain cases, especially, if it goes to the root of the case. At the same time, the decision of the trial Court to decide the objection at the time of the final arguments in case the same is only qua the admissibility cannot be held as wrong or incorrect.

(12) Learned counsel for the petitioner also relied upon the judgments rendered in the cases of *Girdhari Lal* versus *Ritesh Mahajan and another*⁴, *Jasjit Singh and another* versus *Prem Harjit Singh and another*⁵ and *Ramesh Chandra and others* versus *Additional District Judge and others*⁶. All the judgments are passed by various Single Bench of the High Court. None of them have taken note of Order 13 Rule 3 CPC.

(13) In view of the above, the judgment rendered in the case of *Bipin Shantilal Panchal* (supra) cannot be said to be contrary to the judgment rendered in the case of *RVE Ventakachala Gounder* (supra). No doubt, the same was rendered in a criminal case, but, the reasoning and the observations applies in both set of cases which is clear from para 14 and 15 of the said judgment rendered in the case of *Bipin Shantilal Panchal* (supra).

“14. When so recast, the practice which can be a better substitute is this: 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 (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the judge or magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure

⁴ 2005(2) RCR (Rent) 426

⁵ 2013(1) RCR (Civil) 514

⁶ 2010 AIR (Raj) 59

suggested above can be followed.)

15. The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.”

(14) Accordingly, it is held that the objection should normally be decided there and then but failure to do so, and decision to decide at the final stage, cannot be set aside in view of an objection being only with respect to its admissibility as held by the above judgments as also in view of the Order 13 Rule 3 CPC.

(15) In view of the above, no ground to interfere with the impugned order is made out.

(16) Dismissed accordingly.

Ritambara Rishi