CS No.10204/16
Beena Devi Vs. Rakesh Chaudhary

28.05.2018

Present: Proxy counsel for parties.

Today matter is listed for orders on two applications i.e. application under Order VIII Rule 1 (A) of CPC filed by the defendant as defendant wants to file certified copies of the some documents and application under Order XIII Rule 3 of CPC read with Section 35 of Indian Stamp Act for de-exhibiting rent agreement Ex. PW 1/1 on the ground that the same is not duly stamped.

APPLICATION UNDER ORDER VIII RULE 1 A CPC

1. In the said application, it is submitted that defendant alongwith written statement had filed photocopy of documents as mentioned in para 2 of the application and now he wants to place on record certified copy of the said documents.
2. The said application has been objected to on the ground that defendant should have filed the relevant documents alongwith the written statement and that the documents which the defendant now wants to place on record, are irrelevant, therefore, application should not be allowed.
3. It is not denied in reply to the application that copy of the documents, of which certified is now placed before the court were already filed by the defendant alongwith the written statement.
4. In these circumstances, merely filing of certified copy of the documents of which photocopies were already filed does not amount to fresh filing of some documents and it does not cause any prejudice to the plaintiff. Accordingly, application

under Order VIII Rule 1 A of CPC is allowed and certified copies are taken on record.

APPLICATION UNDER ORDER XIII RULE 3 OF CPC

1. In the said application, the defendant has prayed that Ex. PW 1/1 i.e. Rent Agreement exhibited during the testimony of PW-1 Tejpal Singh, be de-exhibited as said document is not duly stamped.
2. In reply to the said application, it is submitted by counsel for plaintiff that the objection regarding mode of proof was never taken when Ex. PW-1/1 (Rent Agreement) was exhibited before the court and subsequently now by way of the present application, the said document can not be de-exhibited.
3. It is also submitted that judgment titled ***Bipin Shanti Lal Vs. State of Gujarat AIR 2001 SC 1158*** is not applicable because of the changes in Rule 4 of Order XIII of CPC.
4. Order XIII Rule 3 of CPC provides that the court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible upon recording the grounds for such rejection and Section 35 of Indian Stamp Act provides that document / instrument which is not duly stamped shall not be admitted in evidence for any purpose. Section 36 of the same Act further provides that an unduly stamped instrument once admitted in evidence, such admission shall not be called in question at any stage of the same or proceedings on the ground that instrument has not been duly stamped except as provided in Section 61.
5. Now coming to the facts of the present case, PW-1 was examined on 29.03.2016 and in his testimony he exhibited the Rent Deed dated 15.04.2011 as Ex. PW 1/1 and the objection

was taken as to mode of proof of said document upon which observation was given by Learned Predecessor that the said objection shall be decided during course of arguments and that the aforesaid document Ex. PW 1/1 is given the aforesaid exhibit mark only for the purpose of identification. It is said objection, which is subject matter of the present application, as it is contended by the defendant that objection regarding insufficient stamp duty should be decided by the court at this stage itself.

6. In judgment titled ***Bipin Shanti Lal (SUPRA)***, the relevant para is para 13 and the same reproduced as under:-

> *"13. 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 a relates to deficiency of stamp duty of a document the court has to decide the objection before proceedings further. For all other objections the procedure suggested above can be followed****."*

7. In the last line of the aforesaid paragraph, it is stated that the objection regarding deficiency of stamp duty has to be decided by the court before proceedings further and the reason for the same is simple i.e. the objection regarding stamp duty if taken and noted by the court at appropriate stage, it gives an opportunity to the party producing the document to pay the requisite stamp duty on the insufficiently stamped instrument and thereby remove the said objection before the suit is finally decided.

8. The document which is subject matter of the present application is a Rent Agreement Ex. PW 1/1 , as per which suit property was let out for a period of eleven months from 15.04.2011 to 15.03.2012 at a monthly rent of Rs.30,000/- excluding electricity and water charges. The document was prepared on stamp paper of Rs.50/- only and therefore on the face of it the document is not duly stamped and this fact needs to be noted by the court at this stage itself, so that the plaintiff may be able to pay requisite stamp duty / penalty on the said document and remove this objection regarding insufficient stamp, taken by the defendant both in the present application as well as at the time of evidence of PW-1 on 29.03.2016.

9. Therefore, the application is allowed and the said document is impounded being insufficiently stamped under Section 33 of the Indian Evidence Act. Copy of the said document is retained on record and original of the same be sent to the Collector of Stamp, who may levy penalty as per law and send the same back to the court, after the appropriate stamp duty / penalty imposed by the Collector is duly paid.

Put up for further proceedings on 20.08.2018.

(**S.P.S. LALER**)
ADJ-01 (Central)THC, Delhi
28.05.2018
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