

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6207 OF 2010
(Arising out of SLP(C) No.19894 of 2009)

M/S. KAPIL COREPACKS PVT. LTD. & ORS. Appellant (s)

VERSUS

HARBANS LAL (D) THR. LRS. Respondent(s)

Date: 03.08.2010 This appeal was called on for judgment today.

For Appellant(s) Mr. Gaurav Kejriwal, Adv.

For Respondent(s) Mr. Abhijat P. Medh, Adv.

Hon'ble Mr. Justice R.V. Raveendran pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice H.L. Gokhale.

Leave granted.

The appeal is allowed in terms of the signed judgment.

(Sukhbir Paul Kaur)
Court Master

(M.S. Negi)
Court Master

(Signed Reportable Judgment is placed on the file)

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6207 OF 2010
[Arising out of SLP (C) No.19894/2009]

M/s. Kapil Corepacks Pvt.Ltd. & Ors. ... Appellants

Vs.

Shri Harbans Lal (since deceased)Through Lrs. ... Respondents

J U D G M E N T

R.V.RAVEENDRAN, J.

Leave granted.

This appeal relates to the scope of

Rule 2 of Order 10 of Code of Civil Procedure ('Code' for short) and the correctness of invoking of Section 340 of the Code of Criminal Procedure ('Cr.P.C.' for short) in regard to answers given by a party in an examination under Order 10 Rule 2 of the Code.

2. Late Harbans Lal (for short the 'plaintiff' of whom the respondents are the legal heirs) filed a suit against the appellants on 5.9.2006, for recovery of Rs. 66 lakhs. He alleged that second appellant and his brother late Sohan Lal Dua (father of third appellant) on behalf of the first appellant, had executed an Agreement/Receipt dated 7.9.2003 agreeing to sell him an industrial property for a consideration of Rs. 2,02,41,600/- and had received a sum of Rs. 33 lakhs made up of Rs. 9 lakhs by cheque and Rs. 24 lakhs in cash towards the said agreement. He further alleged that the appellants were unwilling to convey the property and failed to produce the documents necessary to satisfy him about their title to the property; and that therefore in terms of the agreement, he was suing for refund of double the amount advanced by him.

3. The appellants filed a criminal complaint dated 23.2.2007 against Harbans Lal and certain others alleging that the purported signatures of second appellant and late Sohanlal Dua on the said agreement/receipt were forged and that they had not executed any such agreement/receipt. On 5.3.2007, they also filed their written statement in the suit filed by Harbans Lal denying the claim, and making a counter claim seeking a declaration that the agreement/receipt put forth by the plaintiff was forged and void. The appellants alleged that second appellant and his late brother had never signed the agreement/receipt and the signatures found thereon, (purporting to be the signatures of second appellant and his late brother) were clever forgeries; that they did

not receive Rs.24 lakhs said to have been paid in cash; that the sum of Rs. 9 lakhs paid by cheque by Harbans Lal, was an advance to their company (first appellant) obtained by late Sohanlal Dua to tide over a short term financial crisis and the said amount was treated as share application money.

4. In the said suit, the appellants filed an application under Section 151 of the Code for referring the agreement/receipt to a hand writing expert or a Government Forensic Laboratory for examination of the signatures therein and for keeping the said document in safe custody. On 31.7.2007 a learned Single Judge of the High Court made an order directing as follows : (a) parties to file their original documents within four weeks and matter to be listed before the Joint Registrar for admission/denial of documents on 27.9.2007; (b) matter to be listed before court for framing issues on 8.1.2008; (c) parties to be personally present on the next date of hearing for recording their statement under Order 10 Rule 2 of the Code; and (d) the original receipt/agreement of sale dated 7.9.2003 should be kept in safe custody in a sealed cover. In regard to the appellants' application seeking reference to a hand writing expert, the learned single Judge directed as follows:
".....Insofar as the directions sought for sending the receipt/agreement to sell to a hand writing expert is concerned, I am of the considered view that the parties can lead their respective evidence including of hand writing expert in support of their pleas. Application stands disposed of."

5. The appellants filed an appeal aggrieved by the refusal to refer the matter to a hand writing expert, contending that they had obtained a Preliminary Report dated 4.2.2007 from a Handwriting Expert with reference to a

photocopy of the Agreement/Receipt; and that the Handwriting Expert could give expert evidence on the genuineness of the document, only if he got an opportunity to examine the original also. The said appeal was disposed of by a Division Bench of the High Court on 1.11.2007 with the following observations:

"In our considered opinion, the apprehension of the learned counsel for the appellant is misplaced and unfounded as the appellant can file an application before the learned Single Judge seeking intervention of the court to permit a handwriting expert to examine the original receipt/agreement to sell dated 7.9.2003 take photographs etc. and give his opinion with regard to the genuineness of the said document.

As and when any application is filed by the appellant, the same shall be considered by the learned Single Judge in terms of the observations made herein giving due weightage to the submissions of the learned counsel appearing for the appellant."

In pursuance of it, the appellants filed an application on 7.1.2008 under Order 26 Rule 10A of the Code to permit their Handwriting Expert to inspect the original Agreement/Receipt dated 7.9.2003 and take photographs thereof so that he can give a further report as also evidence. They also made another application on 7.1.2008 to modify the order dated 31.7.2007 and defer the examination under Order 10 Rule 2 of the Code till the report of the Handwriting Expert was received. In the meanwhile, the plaintiff Harbans Lal having died on 12.11.2007, his legal representatives came on record on 29.4.2008.

6. On 3.10.2008, a learned Single Judge directed the Principal Officer and Managing Director of the first appellant-company to appear in person on 12.11.2008 along with its annual returns filed with the Registrar of Companies, income tax returns and the balance sheets for the financial year 2003-2004 onwards. In pursuance of the said order, the second appellant appeared before the court with the relevant documents on 12.11.2008. The second appellant

was examined under Order 10 Rule 2 of the Code and his statement recorded by the learned Single Judge, is extracted below:

"I am the Managing Director of M/s. Kapil Corepacks Pvt.Ltd. Rs. 9 lacs received from the plaintiff is shown in the statement of account of the defendant No.1 - Company. However, the said amount is not reflected in the annual return of the defendant No.1-Company which was filed in the Registrar of Companies. It is correct for the period ending 31st March, 2004 receipt of share application money of Rs. 9 lacs is not shown and mentioned. As on 31st March, 2004, the paid up share capital of the defendant No. 1- Company was Rs. 51 lacs. This did not include Rs. 9 lacs. Defendant No.1- Company is a Pvt. Ltd. company.

The plaintiff did not fill up any share application form/share allotment form before payment of money. I am not aware whether a request letter or a share application form is required to be filled up by a party before shares can be allotted. At no point of time, defendant No. 1 has recorded or mentioned entry of Rs. 24 lacs as received from the plaintiff in cash. We know the plaintiffs. We have known them for several years.

Question : Please examine the stamp and the signatures and state whether they belong to the defendant No. 1 - Company and who has signed?

(Witness was shown copy of Agreement/Receipt in a manner that only the rubber stamp and the signature on the document was visible and the rest portion of the document was covered by a blank paper. For the sake of convenience, the Agreement/receipt is marked 'A')

Answer : Stamp at point 'A' is that of defendant No.1 - Company and the same has been signed by me.

Question : Are you ready and willing to pay back Rs. 9 lacs?

Answer : We are ready and willing to pay Rs. 9 lacs.

(emphasis supplied)

On conclusion of the said examination, the learned Single

Judge made the following order on 12.11.2008:

"Statement of the Managing Director of the defendant No. 1 - Company has been recorded today in the court. The Managing Director has admitted his signature on the Agreement/receipt as well as stamp of the defendant No. 1 - Company on the said document. The said document was thereafter shown to the witness after removing blank paper. I may note here that the said document was denied at the time of admission/denial and in the written statement.

Witness -Managing Director of defendant No. 1 Company has produced copy of annual returns. These will be indexed and filed in the Registry within two days. Copy of the same be supplied to the learned counsel for the plaintiff within one week.

List this matter on 21st January, 2009 when all pending applications will be considered.

Court on the next date will also examine whether or not to initiate proceedings against Mr. Harish Kumar Dua, Managing Director of defendant No. 1 Company under Section 340 Code of Criminal Procedure, 1973 and 195 of the Indian Penal Code."

(emphasis supplied)

7. Feeling aggrieved, the appellants filed an intra-court appeal on 16.1.2009. A Division Bench of the High Court dismissed the said appeal, by the following order dated 20.1.2009.

"The Managing Director of the appellant had denied his signatures earlier on the agreement/receipt but when his statement was recorded under order 10 CPC before the court, an admission came that the signature were his and stamp of defendant No. 1 company. The truth emerged though belatedly.

We see nothing wrong with this process by which the learned judge has recorded statement under Order 10 of CPC which is a tool for the court to obtain elucidation of the matter and to obtain answer to any material question. The authority of the court to examine a party under Order 10 Rule 2 CPC can hardly be doubted and undoubtedly the crucial document is the agreement/receipt in respect of the matter in controversy.

We find that the appeal is wholly misconceived and without any merit."

(emphasis supplied)

8. The said order is challenged in this appeal by special leave. On the contentions urged by the learned counsel, the following questions arise for our consideration:

(i) What is the scope and ambit of Order 10 Rule 2 of the Code?

(ii) Whether the court could, in an examination under Order 10 Rule 2 of the Code, confront a defendant with only the signature portion of a disputed unexhibited document filed by the plaintiff (by covering the remaining portions of the document) and require him to identify the seal/stamp and signature?

(iii) Whether on the basis of the answer given by a party, in response to a question under Order 10 Rule 2 of the Code, the court could prosecute him under Section 340 of Code of Criminal Procedure read with Section 195 of the Indian Penal Code?

Re : Question (i)

9. We may first advert to the relevant provisions. Rule 2

of Order 10 of the Code as also Rules 1 and 3 are relevant

and they are extracted below :

"ORDER 10 - EXAMINATION OF PARTIES BY THE COURT

1. Ascertainment whether allegations in pleadings are admitted or denied-

At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

2. Oral examination of party, or companion of party --

(1) At the first hearing of the suit, the Court-

(a) shall, with a view to elucidating matters in controversy in the suit examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and

(b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in Court or his pleader is accompanied.

(2) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.

(3) The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.

3. Substance of examination to be written --

The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record."

10. Rule 1 enables the court to ascertain from each of the parties (or his pleader), at the first hearing whether he admits or denies such of those allegations of fact made in the pleadings of the other party, which were not expressly or by necessary implication admitted or denied by him. In other words, if the defendant in his written statement fails to expressly or by necessary implication admit or deny any of the plaint allegations, the court can ascertain from the defendant, whether he admits or denies the said plaint allegations. Similarly, if the defendant has made some

allegations against the plaintiff in his written statement, and no reply is filed thereto by the plaintiff, the court can ascertain whether plaintiff admits or denies those allegations. Resort to Rule 1 of Order 10 is necessary only in cases where the court finds that the plaintiff or the defendant has failed to expressly or impliedly admit or deny any of the allegations made against him, by the other party. Examination under Order 10 Rule 1 of the Code will not be necessary where the pleadings of each party have been fully and clearly traversed by the other party.

11. On the other hand, the examination under Rule 2 of Order 10 of the Code, need not be restricted to allegations in the pleadings of the other party, but can relate to elucidating any matter in controversy in the suit. Further, under Rule 1 of Order 10, the court can examine only the parties and their advocates, that too at the 'first hearing'. On the other hand, Rule 2 enables the court to examine not only any party, but also any person accompanying either party or his pleader, to obtain answer to any material question relating to the suit, either at the first hearing or subsequent hearings. The object of oral examination under Rule 2 of Order 10 is to ascertain the matters in controversy in suit, and not to record evidence or to secure admissions. The statement made by a party in an examination under Rule 2 is not under oath, and is not intended to be a substitute for a regular examination under oath under Order 18 of the Code. It is intended to elucidate what is obscure and vague in the pleadings. In other words, while the purpose of an examination under Rule 1 is to clarify the stand of a party in regard to the allegations made against him in the pleadings of the other party, the purpose of the oral examination under Rule 2 is mainly to elucidate the allegations even in his own pleadings, or any documents filed with the pleadings. The power under Order 10 Rule 2 of the

Code, cannot be converted into a process of selective cross-examination by the court, before the party has an opportunity to put forth his case at the trial.

12. The above position of law is well settled. We need refer only to two decisions in this behalf. In Manmohan Das v. Mt. Ramdei & Anr. [AIR 1931 PC 175], the Privy Council observed:

"No doubt under Order 10, Rule 2, any party present in Court may be examined orally by the Court at any stage of the hearing, and the Court may if it thinks fit put in the course of such examination questions suggested by either party. But this power is intended to be used by the Judge only when he finds it necessary to obtain from such party information on any material questions relating to the suit and ought not to be employed so as to supersede the ordinary procedure at trial as prescribed in Order 18."

(emphasis supplied)

A Division Bench of the Madras High Court in Arunagiri Goundan v. Vasantharoya Koundan & Ors (AIR 1949 Madras 707), held as follows referring to Order 10 Rule 2 of the Code :

"At the outset it must be pointed out that this (Order 10 Rule 2) does not provide for an examination on oath. This provision was intended to be used to elucidate the matters in controversy in suit before the trial began. This is not a provision intended to be used to supersede the usual procedure to be followed at the trial."

(emphasis supplied)

13. The object of Order 10 Rule 2 is not to elicit admissions. Nor does it provide for or contemplate admissions. The admissions are usually contemplated (i) in the pleadings (express or constructive under Order 8 Rule 5 of the Code); (ii) during examination of a party by the court under Order 10 Rule 1 of the Code; (iii) in answers to interrogatories under Order 11 Rule 8 of the Code; (iv) in response to notice to admit facts under Order 12 Rule 4 of the Code; (v) in any evidence or in an affidavit, on oath; and (vi) when any party voluntarily comes forward during the pendency of a suit or proceedings to make an admission.

14. The power of court to call upon a party to admit any document and record whether the party admits or refuses or neglects to admit such document is traceable to Order 12 Rule 3A rather than Order 10 Rule 2 of the Code. Nothing however comes in the way of the court combining the power under Order 12 Rule 3A with its power under Order 10 Rule 2 of the Code and calling upon a party to admit any document when a Party is being examined under Order 10 Rule 2. But the court can only call upon a party to admit any document and cannot cross-examine a party with reference to a document.

Re : Question No.(ii)

15. Learned counsel for the appellants contended that confronting the signature portion of a disputed document by covering up the remaining portions, is a tool in the arsenal of the cross examining counsel. He submitted that the court examining a party under Order 10 Rule 2 of the Code while purporting to elucidate the matters in controversy, cannot confront the signature portion of a disputed unexhibited document by adopting the procedure of covering up the other portions of the agreement.

16. The learned counsel for the respondents on the other hand submitted that the power of the court under Order 10 Rule 2 of the Code, to examine any party with reference to any document is wide and unrestricted and therefore, any procedure adopted to arrive at the truth, could not be said to be a deviation from the normal examination under Order 10 Rule 2 of the Code. He relied upon the decisions of several High Courts in support of his contention that the court could confront a party with a document and seek his admission in respect of its execution. The decisions relied upon are : Bhanwarlal Kavad v. Shyamsunder [AIR 1984 Raj. 113], Amrita Devi v. Sripat Rai [AIR 1962 All. 111], Rajiv Srivastava v. Sanjiv Tuli [AIR 2005 Del. 319] and Gautam Adani v. Container

Corporation of India [150 (2008) DLT 281]. On a careful consideration of these decisions, we find that they are not of any assistance in this case.

16.1) In Bhanwar Lal Kavad (supra), a learned Single Judge of Rajasthan High Court held:
"In my opinion the court should resort to the examination of the parties under Rule 2, particularly on the documents, which are said to be signed by the parties. it is better that the original documents are put to the party and admission or denial is obtained after visual observations by the party himself of the original documents. After looking into the documents, the party would be in a position to admit or deny the same, which would not be possible, if the same is got done by his pleader."

16.2) Learned Single Judge of the Allahabad High Court in Amrita Devi (supra) and the Division Bench of Delhi High Court in Rajiv Srivastava (supra) held that an admission made by a party under Order 10 Rule 2 of the Code is conclusive against him, and the court can proceed to pass judgment on the basis of such admission.

16.3) In Gautam Adani (supra), a Division Bench of the Delhi High Court referred to the scope of Order 10 Rule 2 thus:

".....we are of the view that examination of the parties is a matter that is per se intended not so much for determining any right or obligation in the suit or resolving or adjudicating upon a controversy as it is for identifying the precise area of controversy so that the same can be effectively adjudicated upon. The distinction between any order which adjudicates upon a controversy or a part thereof and another which simply attempts to identify the real area in controversy cannot be lost sight of. Inasmuch as the impugned order directed the defendants to remain present for recording their statements under Order 10 Rule 2, it was an attempt to identify the real issues in controversy and to elucidate matters which, in the opinion of the learned Single Judge, required to be elucidated."

16.4) None of these decisions assists the respondents.

Bhanwar Lal Kavad recognizes the power of the court to call upon a party to admit a document. Amrita Devi and Rajiv Srivastava reiterate the position that if a party makes an

admission of fact, it will be binding on him. Gautam Adani supports the contention of the appellants that the scope of Order 10 Rule 2 of the Code is limited to identifying the matters in controversy and not to adjudicate upon the matters in controversy.

17. The object of the examination under Order 10 Rule 2 of the Code is to identify the matters in controversy and not to prove or disprove the matters in controversy, nor to seek admissions, nor to decide the rights or obligations of parties. If the court had merely asked the second appellant whether he had executed the agreement/receipt or not, by showing him the document (by marking the document for purposes of identification only and not as an exhibit), it might have been possible to justify it as examination under Order 10 Rule 2 read with Order 12 Rule 3A of the Code. But any attempt by the Court, to either to prove or disprove a document or to cross-examine a party by adopting the stratagem of covering portions of a document used by cross-examining counsel, are clearly outside the scope of an examination under Order 10 Rule 2 of the Code and the power to call upon a party to admit any document under Order 12 Rule 3A of the Code. What the High Court has done in this case is to 'cross-examine' the second appellant and not examine him as contemplated under Order 10 Rule 2 of the Code. We therefore hold that the purported examination under Order 10 Rule 2 of the Code, by confronting a party only with a signature on a disputed and unexhibited document by adopting the process of covering the remaining portions thereof is impermissible, being beyond the scope of an examination under Order 10 Rule 2 of the Code.

18. In this case the appellants-defendants denied having signed/executed any agreement/receipt in favour of the respondents. In the examination under Order 10 Rule 2, the

court did not ask the second appellant whether he had signed the document or not, by showing the document. What was done was confrontation of a signature alone without disclosing the document. When so confronted, the second appellant admitted the signature shown as his signature. But that is not an admission of execution of agreement/receipt. The specific case of appellants in the written statement was that the Agreement/Receipt dated 7.9.2003 was a clever forgery. If a signature is a clever forgery, there is a likelihood of the same passing the normal scrutiny of the person to whom it is attributed. Similar is the position in regard to stamping the name of the company. If a false signature is very different from the real signature, and is easily identifiable, it will be a 'forgery' but not a 'clever forgery'. Therefore, if the document allegedly containing the forged signature is covered in such a manner as to show only a stamp/seal and signature, and if a question is put by the court under Order 10 Rule 2 to identify the seal/stamp and the signature and if the witness identifies the signature as his and the stamp/seal as that of his company, there are two possibilities : The first is that what is shown is the genuine signature of the party and the genuine stamp of his company, and that he has identified and admitted them. The second is that they are clever forgeries and the party could not obviously identify the forgery when it was shown to him by covering other portions of the document, when he is given only a normal glance without an opportunity to scrutinize it properly. Whether it is a forgery or not will have to be determined with reference to the expert evidence and after the evidence of both plaintiff and defendants tested by cross-examination.

19. Both the learned Single Judge and the Division Bench committed an obvious error in equating admission of a signature which is claimed to be a clever forgery, as an admission of execution of the agreement/receipt and the

contents thereof. The observations of the learned Single Judge in his order that "The Managing Director has admitted his signature on the agreement/receipt as well as stamp of the defendant no.1 company on the said document" and the further observation that on the basis of the said answer, the second appellant could be proceeded under Section 195 of Indian Penal Code read with Section 340 of Code of Criminal Procedure, are without any basis. Equally unwarranted is the observation of the Division Bench : "The Managing Director of the appellant had denied his signature earlier on the agreement/receipt, but when his statement was recorded under Order 10 CPC before the court, an admission came out that the signature were his.... The truth emerged though belatedly". Admission must obviously be a conscious and deliberate act. Admission can be explained. An admission of a signature is not an admission of execution of a document. The power to identify the matters in controversy by examination of parties at the pre-trial stage under Order 10 Rule 2, is completely different from the power exercised by the court under Section 165 of the Evidence Act to put any question it pleases in any form, to a witness or a party in order to discover or to obtain proper proof of relevant facts, or the power under Order 18 Rule 14 of the Code to recall and examine any witness. The court's anxiety to do justice by speeding up the process of the suit should not itself lead to injustice.

Re : Question No.(iii)

20. The Division Bench has affirmed the order of the learned Single Judge that he will next hear whether he should proceed to initiate proceedings under Section 340 Cr.P.C. read with Section 195 of Indian Penal Code ('IPC' for short). Section 195 of Cr.P.C. provides that whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence punishable with

imprisonment for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished. Section 195 (1) (b) of the Cr.P.C. provides that no court shall take cognizance of any offence punishable under section 195 of IPC when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court. Section 340 of the Cr.P.C. provides that when upon an application made to it in that behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of subsection (1) of section 195 of Cr.P.C. which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect, make a complaint thereof in writing, sent it to a Magistrate of the first class having jurisdiction etc. Thus the power under section 340 CrPC read with section 195 IPC can be exercised only where someone fabricates false evidence or gives false evidence. By no stretch of imagination, a party giving an answer to a question put under Order 10 Rule 2 of the Code when not under oath and when not being examined as a witness, can attract section 195 of IPC and consequently cannot attract section 195(1)(b) and section 340 of Cr.P.C.

21. The respondents relied upon the decision of a Division Bench of the High Court in Satish Kumar v Union of India [2009 (108) DRJ 317] to contend that there can be a prosecution under Section 340 Cr.P.C. in regard to a statement under Order 10 Rule 2 of the Code. The conclusion in Satish Kumar that a party can be prosecuted under Section 340 Cr.P.C. for his answers in an examination under Order 10

Rule 2 is erroneous and unsound. As noticed above, the answers to an examination under Order 10 Rule 2 are not on oath and therefore the party is not deposing as a witness on oath when giving his answers under Order 10 Rule 2 of the Code. In Satish Kumar, the Delhi High Court purported to rely upon the decision of this Court in B.K. Gupta v. Damodar H. Bajaj [2001 (9) SCC 742], to hold that prosecution under section 340 CrPC is permissible in regard to answer given under Order 10 Rule 2 of the Code. What this Court observed in B.K. Gupta was that a complaint can be filed against a person who has given false affidavit or evidence in a proceeding before the court. But a party giving an answer in an examination under Order 10 Rule 2 is neither giving evidence nor giving a affidavit. Section 340 of the Code will not be attracted with reference to any statement under Order 10 Rule 2 of the Code assuming that the Delhi High Court had laid down the law rightly in Satish Kumar, the said observation will not help the respondent in this case. In Satish Kumar, it was held that a false statement given in the examination under Order 10 Rule 2 of the Code can give rise to criminal prosecution under Section 340 of Cr.P.C. But in this case the High Court has proceeded on the basis that the second appellant spoke the 'truth' in response to the question in the examination under Order 10 Rule 2 of the Code. There is no finding that second appellant made a 'false statement' in his examination under Order 10 Rule 2 CPC. Therefore, the said decision will be inapplicable, even if it had been rightly decided.

22. Consequently, the decision of the court to consider initiation of proceedings under section 340 Cr.P.C. read with section 195 IPC in regard to an answer to a question put under Order 10 Rule 2 of the Code is ill-conceived and wholly without jurisdiction.

Conclusion

23. In view of the above, this appeal is allowed. The order dated 20.1.2009 of the Division Bench and the order dated 12.11.2008 of the learned Single Judge, directing the matter to be listed to consider whether the second appellant should be prosecuted under Section 340 Cr.P.C., are set aside. As the process of confrontation of an unexhibited document by covering portions of it by a court, is beyond the scope of examination under Order 10 Rule 2 of the code, the answer to such question shall be excluded from consideration and completely disregarded. The court conducting the trial and hearing arguments shall decide the suit in accordance with law on the basis of evidence placed and ignore the said 'answer' under Order 10 Rule 2 of the Code.

24. We make it clear that whatever we have stated or observed during the course of this Judgment, are only in the context of examining the correctness of the procedure adopted under Order 10 Rule 2 of the Code, and not intended to be findings of fact.

.....J.
(R V Raveendran)

New Delhi;
August 3, 2010.

.....J.
(H L Gokhale)