SUPREME COURT OF INDIA

J. Yashoda

Vs

K. Shobha Rani

Appeal (Civil) 2060 of 2007 (Arising Out of S.L.P. (C) No.12625 of 2005)

(Arijit Pasayat and L. S. Panta, JJ)

19.04.2007

JUDGMENT

DR. ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Andhra Pradesh High Court allowing the civil revision petition filed. Challenge in the said petition was to the order dated 3.11.2003 in OS No. 30 of 1999 on the file of learned First Additional Chief Judge, City Civil Court, Secunderabad wherein document Exh. B-1 to B-8 were marked and taken as secondary evidence. The challenge in the civil revision was that the aforesaid documents could not have been marked and taken as secondary evidence since they are photo copies.

Learned Single Judge held that the documents which were sought to be received and marked as secondary evidence are photo copies. It was noted that it may be a fact that the original of the documents are not available with the parties but at the same time the requirement of Section 63 of the Indian Evidence Act, 1872 (in short the 'Act') is that a document can be received as an evidence under the head of secondary evidence only when the copies made from or compared with the

original are certified copies or such other documents as enumerated in the above section. The High Court found the photo copies can not be received as secondary evidence in terms of Section 63 of the Act and they ought not to have been received as secondary evidence. Since the documents in question were admittedly photo copies, there was no possibility of the documents being compared with the originals. Accordingly the Civil Revision was allowed.

Learned counsel for the appellant submitted that a rigid view has been taken by the High Court. The High Court could not have ignored the mandatory requirements as contemplated under Section 63 of the Act more specifically when the Section provides that when the copies made from the evidence can be adduced as secondary evidence. It was further submitted that the mandatory prescriptions in Section 65(a) of the Act have been lost sight of.

Learned counsel for the respondent on the other hand supported the judgment of the High Court stating that the requirement of Section 65(a) have not been fulfilled in this case and the High Court rightly held that the documents could not have been accepted as secondary evidence.

In order to consider rival submissions it is necessary to take note of Sections 63 and 65 (a). Sections 63 and 65(a) reads as follows:

"63: Secondary evidence Secondary evidence means and includes

(1) Certified copies given under the provisions hereinafter contained;

(2) Copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy and copies compared with such copies;

(3) Copies made from or compared with the original;

(4) Counterparts of documents as against the parties who did not execute them;

(5) Oral accounts of the contents of a document given by some person who has himself seen it.

65. Cases in which secondary evidence relating to documents may be given Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:-

(a) When the original is shown or appears to be in the possession or power- of the person against whom the document is sought to be proved or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in Section 66, such person does not produce it."

Secondary evidence, as a general rule is admissible only in the absence of primary evidence. If the original itself is found to be inadmissible through failure of the party, who files it to prove it to be valid, the same party is not entitled to introduce secondary evidence of its contents.

Essentially, secondary evidence is evidence which may be given in the absence of that better evidence which law requires to be given first, when a proper explanation of its absence is given. The definition in Section 63 is exhaustive as the Section declares that secondary evidence "means and includes" and then follow the five kinds of secondary evidence.

The rule which is the most universal, namely that the best evidence the nature of the case will admit shall be produced, decides this objection that rule only means that, so long as the higher or superior evidence is within your possession or may be reached by you, you shall give no inferior proof in relation to it. Section 65 deals with the proof of the contents of the documents tendered in evidence. In order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document. Under Section 64, documents are to be provided by primary evidence. Section 65, however permits secondary evidence to be given of the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in the said Section must be fulfilled before secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in the Section. In Ashok Dulichand v. Madahavlal Dube and Another Â , it was inter alia held as follows:

"After hearing the learned counsel for the parties, we are of the opinion that the order of the High Court in this respect calls for no interference. According to clause (a) of Section 65 of Indian Evidence Act, Secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in possession or power of the person against whom the document is sought to be proved or of any person out of reach of, or not subject to, the process of the Court of any person legally bound to produce it, and when, after the notice mentioned in Section 66 such person does not produce it. Clauses (b) to (g) of Section 65 specify some other contingencies wherein secondary evidence relating to a document may be given, but we are not concerned with those clauses as it is the common case of the parties that the present case is not covered by those clauses. In order to bring his case within the purview of clause (a) of Section 65, the appellant filed applications on July 4, 1973, before respondent No. 1 was examined as a witness, praying that the said respondent be ordered to produce the original manuscript of which, according to the appellant, he had filed Photostat copy. Prayer was also made by the appellant that in case respondent no. 1 denied that the said manuscript had been written by him, the Photostat copy might be got examined from a handwriting expert. The appellant also filed affidavit in support of his applications. It was however, nowhere stated in the affidavit that the original document of which the Photostat copy had been filed by the appellant was in the possession of Respondent No. 1. There was also no other material on the record to indicate the original document was in the possession of respondent no.1. The appellant further failed to explain as to what were the circumstances under which the Photostat copy was prepared and who was in possession of the original document at the time its photograph was taken. Respondent No. 1 in his affidavit denied being in possession appeared to the High Court to be not above suspicion. In view of all the circumstances, the High Court to be not above suspicion. In view of all the circumstances, the High Court came to the

conclusion that no foundation had been laid by the appellant for leading secondary evidence in the shape of the Photostat copy. We find no infirmity in the above order of the High Court as might justify interference by this Court."

The admitted facts in the present case are that the original was with one P. Srinibas Rao. Only when conditions of Section prescribed in Section 65 are satisfied, documents can be admitted as secondary evidence. In the instant case clause (a) of Section 65 has not been satisfied. Therefore, the High Court's order does not suffer from any infirmity to warrant interference.

The appeal fails and is dismissed but in the circumstances without any order as to costs.