

SUPREME COURT OF INDIA

Haldiram Bhujiawala

Vs.

Haldiram (India) Pvt.Ltd.

C.A.Nos.6040-6041 of 2008

(S.H. Kapadia and B. Sudershan Reddy JJ.)

01.10.2008

ORDER

In S.L.P.(C) Nos.22728-22729/2007:

1. Leave granted.

2. In a pending Suit No.188/2003 in the Court of Additional District Judge, Delhi, filed by Anand Kumar Deepak Kumar and others against Haldiram Bhujiawala, an application was made by the defendant to amend the written statement. It may be mentioned that in the original written statement, it was stated that the deed of assignment was signed by Kamala Devi out of respect. Later on, by way of amendment, it was stated that the deed of dissolution was signed out of coercion. We are not concerned with the first amendment which was allowed to the written statement. However, on 5th October, 1999, an application for amendment was preferred by the appellants herein under Order 6, Rule 17 of *C.P.C.*, inter alia, seeking permission to amend the written statement in view of subsequent developments set out in the said application.

3. It is this application dated 5th October, 1999 which is the germ of the present dispute. By this application, the earlier statement made in the written statement that the deed was executed under coercion was sought to be substituted by the statement and plea that "the deed was forged".

4. The narrow question that arises for determination is whether the trial court was right in allowing the application for amendment dated 5th October, 1999? It may be stated that by the impugned judgment, the High Court has reversed the judgment of the trial court granting the said amendment.

5. We have gone through the impugned judgments, both of High Court as well as of the trial court, on this point. On going through the judgment of the trial court, we find that while

allowing the amendment application, the trial court has relied upon number of documents and has in effect given a finding almost touching upon the merits of the case. Further, we find that in para 49, the trial court has stated that circumstances exist in this case which should allow admission of certain facts to be corrected. In our view, the trial court had erred in allowing the amendment application for the reasons it has given, namely, it has gone into virtually the merits of the case and sought to correct the existing admission vide the impugned order.

6. In our view, however, we can proceed in this case on the footing that on the relevant date there was a statement in the written statement to the effect that "the deed of dissolution is executed under coercion". If the trial court proceeds on the issue arising from that statement, at the stage of trial, the burden would be on the respondent herein to prove the execution and the contents of the document, namely, deed of dissolution, dated 16th November, 1974. Proving of the document involves proving of execution of the document as well as proving of its contents (see¹). At the stage of proving the execution of the document, it would be open to the appellants herein to cross-examine the witness on the question of execution as well as its content. In that regard, they can rely upon material in their possession and if the trial court finds that there is prima facie case of forgery, it can certainly give an opportunity to the defendant-appellants herein to file an additional written statement and it would be open to the trial court also to frame an additional issue at that stage.

7. We are informed that the trial has not yet commenced.

8. In the light of what is stated above, we are of the view, therefore, that ends of justice would be subserved if, at the stage of proving of the document in question, the trial court finds that there is a prima facie case of forgery then it may allow the appellants herein to file additional written statement and the court may then frame such additional issue.

9. Before concluding, we may state that on 29th January, 2005, the appellants herein have filed amended written statement in pursuance of the order of the trial court. The said written statement will be kept on record in a separate file. That written statement will be taken into account only as and when the trial begins and only after the stage of proving the deed of dissolution is reached and as and when the prima facie case of forgery is made out during the trial.

10. We have been informed that issues have been framed on the basis of the amendment to the written statement which has been allowed by the trial court. It is, therefore, made clear that issues will have to be recast in the light of this order.

11. Subject to above, Civil Appeals stand disposed of, with no order as to costs.

12. In S.L.P.(C) Nos.23268-23269/2007:

“In this case, we find that members of a family are fighting with each other from 1991. Interim applications are increasing by the day. To put an end to all this

controversy, we direct the trial court to hear and dispose of Suit No.188/2003 as early as possible and preferably within six months from today.”

13. We are informed that issues have been settled. We are also informed that dates have been given for day-to-day trial. We request the trial court not to show any leniency in the matter of adjournment and the trial shall proceed on day-to-day basis.

14. In view of our above directions, Shri F.S. Nariman, learned senior counsel appearing on behalf of the petitioners, seeks permission to withdraw these Special Leave Petitions. Accordingly, the Special Leave Petitions stand dismissed as withdrawn.