

RAJASTHAN HIGH COURT

Chander Shekhar

Vs.

Roop Shanker

Civil Revision Petition No. 608 of 1997

(Dr. B.S. Chauhan, J.)

03.09.2002

ORDER

Dr. B.S. Chauhan, J.

1. This revision has been preferred against the order dated 10.3.1997 accepting the application under Order 13, Rule 2 of the Civil Procedure Code, 1908 (for short, 'the Code') filed by the plaintiff/non-petitioner.

2. The facts and circumstances giving rise to this case are that plaintiff/non-petitioner filed a suit for declaration of ownership of the suit property and permanent injunction restraining the petitioner-defendants from interfering with the possession of the plaintiff-non-petitioner. The suit was contested by the petitioner-defendants on various grounds. There had been criminal proceedings also as an F.I.R. had been lodged in respect of the same disputed and the property had also been attached under the provisions of Section 145 of the Criminal Procedure Code. At a belated stage, on 22.1.1994, plaintiff/non-petitioner filed an application under Order 13, Rule 2 of the Code on the ground that the original document has been lost during the miscellaneous proceedings in the Court itself, therefore, he may be permitted to adduce secondary evidence and in view thereof, the document was filed and the same has been taken on record. Hence this revision.

3. Mr. R.P. Dave, learned Counsel for the petitioner-defendants has submitted that the secondary evidence produced by the plaintiff-non-petitioner is a forged document as it is not an exact Photostat copy of the original and the same could not have been accepted. Moreso, even while accepting the document, the Court below has committed an error in holding that the document was admissible, hence the order is liable to be

set aside.

4. On the contrary, Mr. Lalit Kawadia, learned Counsel for the plaintiff/non-petitioner has submitted that as the original document has been lost and in respect thereof, there has been a finding of the Court, the Court below has not committed any mistake in passing the said order. Moreso, during the pendency of the revision, the provisions of Section 13, Rule 2 of the Code stood deleted, therefore, the revision cannot be entertained and the Court below has not committed any jurisdictional error which may warrant interference by this Court in exercise of its revisional jurisdiction

5. I have considered the rival submissions made by the learned Counsel for the parties and perused the record.

6. In *Mt. Taibunnissa Bogum v. Jagdip Pandey*,¹ interpreting the provisions of Order 13, Rule 1 and 2 of the Code, the Court held as under :-

"The provision of the said rule gives no discretion to the Court to receive evidence at a later stage than that mentioned in the previous rule unless good cause is shown to the satisfaction of the Court for non-production thereof. The rule is precise and excludes all documentary evidence produced at a late period unless good cause is shown for its non-production. That rule has been found perhaps in some case, to work a certain amount of hardship and the tendency had, no doubt, been to endow to some extent at all events to enlarge the scope of the rule by allowing the late production of documents in a case where it is quite obvious that no prejudice would arise to the other party by their late production and where the genuineness of the document sought to be admitted is beyond question."

7. While deciding the said case, reliance has been placed upon the judgment of the Calcutta High Court in *Tafeswar Singh v. Bhagwan Das*,²

8. In *Bhekdhari Singh v. Sri Ramchander*,³ the Court held that provisions of Rules 1 and 2 of Order 13 of the Code were framed to prevent the abuse of process of the Court by giving an opportunity to the litigants to fabricate the documents and file the same at a belated stage. The Court was dealing with taking of documents on record relating to Zamabandi in the form of loose sheets which could be fabricated easily.

9. A Division Bench of the Calcutta High Court, in *Mohini Mohan Saha v. Province of Bengal*,⁴ dealt with a land acquisition case for determining the market value of the land. The Court held that the provisions contained in Order 13, Rule 2 of the Code were attracted in the case and must be applied. The reason for delay in filing the documents, particularly one in the possession of the Acquiring Authority, must be satisfactory. The application filed for taking the documents on record did not contain any satisfactory reasons explaining the delay and, therefore, there was no occasion for the Court to take the said documents on record allowing the said application. The Court further held as under :-

"The Court must record the reasons for allowing the document, in the possession of the party, to be filed late..... The order on the record also does not indicate any sufficient reasons. We must, therefore exclude Ex. LL from our consideration."

10. In *Melappa v. Guramma*,⁵ a Division Bench of the Bombay High Court considered the aforesaid provisions of the Code observing that under Rule 2 of Order 13, documentary evidence in the possession or power of the party, which should have been but has not been produced, will not be allowed to be received at any subsequent stage of the proceedings unless good cause is shown.

11. In *Gyaniram v. Gulabchand*,⁶ this Court has taken a view that there can be no justification in accepting the documents at a belated stage and rejection thereof cannot be held to be not a sound exercise of discretion for the reason that the genuineness of the document may be doubted merely on the ground that it had been filed to a belated stage. Similar view has been reiterated in *Ram Lal Dhirta Ram v. Delhi Municipal Corporation, Delhi*,⁸ observing that the Court may legitimately think as to whether the document is coming from the authenticated source or is such as would have been easily prepared for the purpose of litigation and the documentary may be allowed to be taken on record at a belated stage.

12. In *Karam Singh v. Jagat*,⁹ the Punjab and Haryana High Court considered a case where the document was produced before starting leading evidence and the reference of the said document had been mentioned in the plant as well as in the written statement. The Court held that such a document could have been allowed to be taken on record.

13. In *Nenu Ram v. Vardichand*,¹⁰ this Court considered the case wherein application under Order 13, Rule 2 of the Code was filed just after framing the issues and the same stood rejected by the trial Court on the ground that it had not been filed in time. Allowing the revision, this Court observed as under (at page 139) :-

"The discretion has, no doubt, to be exercised in a judicial manner..... the learned Munsiff exercised his discretion improperly in refusing to receive the three documents produced by the petitioners. The reason is that the documentary were produced soon after the settlement of issues before evidence on any issue was recorded."

14. In *Gopal v. Heera Chand*,¹¹ this Court has held that the documents filed at a belated stage cannot be accepted under Order 13, Rule 2 of the Code as the parties and their witnesses may not be confronted with those documents during their cross-examination and the same cannot be relied upon within the meaning of Order 13, Rule 1 of the Code and in case of any satisfactory explanation for inordinate delay, even for filing certified copies of the documents, the same cannot be accepted unless those documents can be taken on record in which the party intend to rely and has shown good cause for their non-production earlier.

15. In *Bhajan Lal v. Phoosa Lal*¹² this Court has held that where the genuineness and authenticity of a document is not doubtful and it is a certified copy of an admissible document, it should be taken on record through the cost may be imposed. Similar view has been reiterated in *Municipal Council, Bharatpur v. Gokul Chand*,¹³

16. In *Smt. Buchi Bai v. Nagpur University*,¹³ the Division Bench of the Court held that merely because the document is produced at late stage, is not the sufficient ground for its rejection.

17. In *Ashoka Marketing Ltd. v. Rothas Kumar*,¹⁴ the Calcutta High Court allowed the application under Order 13, Rule 2 of the Code observing that though the document should have been produced at an earlier stage but the object of the rule is to prevent fraud by late production of suspicious document. The rule is not penal in nature and it invests the Court of Law with discretion to accept the documents, particularly those, which are above suspicion even though filed late, since the Courts exist to assure fair

trials.

18. In *Gopika Raman Roy v. Atal Singh*,¹⁵ it has been held that where the rules of exclusion apply and the documents cannot be filed without leave of the Court, that leave should not ordinarily be refused where the documents are official records of undoubted authenticity, which may assist the Court to decide rightly the issue before it.

19. But observations made in the aforesaid case were not followed in *Kanda v. Wagh*,¹⁶ wherein it was held as under :-

"It would be erroneous to read these observations as implying that there is no dis-ter of admitting public records at a late stage. The Court has a discretion and while generally speaking it will be a wise exercise of the discretion to admit such evidence, the question must be decided in each case in the light of the particular circumstances..... apparently neither the appellants nor their counsel had consulted the revenue records before filing the suit and ignorance of entries therein would not provide a sufficient cause for the delay in making the application.... the subordinate Judge exercised a wise discretion in refusing to admit additional evidence....."

20. In *Madan Gopal Kanodia v. Mamraj Maniram* .¹⁷ the Hon'ble Apex Court considered the case where the application under Order 13, Rule 1 of the Code was filed by the plaintiff before the evidence has started. The Apex Court held that as it had been done before the evidence had been started, the defendants cannot be said to have been taken by surprise or had suffered any prejudice by production of the said documents and the trial Court has rightly allowed the application. The said provisions did not provide for any particular ritualistic formula in which the order of the Court has to be passed. The object of the provision is merely, to prevent belated production of a document so that it may not work prejudicial to the other side. The said provision clearly clothes the Court with discretion to allow production of document if it is satisfied that good cause is shown to its satisfaction.

21. In *Billa Jagan Mohan Reddy v. Billa Sanjeeva Reddy* ,¹⁸ the Apex Court held that documents can be filed at a belated stage, furnishing explanation of delay and the issue whether delay can be condoned should be considered not applying the rigorous test as one applicable under Section 5 of the Limitation Act. Moreso, documents must be relevant to decide the real issue in controversy and Court must feel that the same

are required to be accepted in the interest of justice.

22. In *Harnam Singh v. Raksha Rani*, ¹⁹ the Hon'ble Supreme Court held that documents may be taken on record but its copy should be served upon the other side and the latter should be given an opportunity to meet the same by filing reply/affidavit etc.

23. In *Madan Lal v. Shyam Lal*, ²¹ the Hon'ble Supreme Court has observed as under (at page 101 of AIR) :-

"The cause shown by the appellant was not considered to be a good cause as provided under Order 13, Rule 2, Civil Procedure Code. It is true that power under Order 13, Rule 2 C.P.C. could be exercised liberally and that 'good cause' requires lesser degree of proof than that of 'sufficient cause'..... Maybe that order is erroneous, however, it cannot be said that such order passed by the trial Court could be interfered with under Section 115, C.P.C. It cannot be said that the trial Court has acted with material irregularity in exercise of its jurisdiction in rejecting the applications filed by the appellant and that the order, if allowed, would occasion a failure of justice. The words 'material irregularity in exercise of jurisdiction' do not cover either errors of fact or law..... it is open to the appellant to raise this contention at the appellate stage, if decree is passed against him."

24. Order 13, Rule 2 of the Code specifically provides that no document can be taken on record at any subsequent stage of the proceedings unless the party intends to rely upon the and shows good cause for their non-production earlier. Thus, if a party files an application to take the documents on record without furnishing any satisfactory explanation of inordinate delay, the Court must refuse to admit the documents on record.

25. Before entering into the merit of the case, it is desirable to deal with the object of amendment in the Code. The provisions of Order 13 Rule 2 stood deleted w.e.f. 1.7.2002 which provides that documentary evidence shall not be adduced by the party which has not been produced in accordance with Rule 1 thereof and shall be received at any subsequent stage of the proceedings by the Court and if the Court receives any such evidence on being satisfied that there was "good cause", it shall record the

reasons for doing so. Therefore, the provisions put an embargo on the power of the court to receive documents at any subsequent state, if the shade had not been produced as required under Rule 1 unless a "good cause was shown and the Court has to record reasons. The provisions have been deleted, but he appeals and saving clauses, as provided under Section 32(2)(b) of the Civil Procedure Code (Amendment) Act, 1999 reads as under :-

"The provisions of Rules 1 and 2 of Order 13 of the First Schedule, as substituted by Section 23 of this Act, shall not affect the documents produced by the parties or ordered by the Court to be produced before the commencement of Section 23 of this Act.

26. Therefore, the Legislative has saved all those documents which had already been received by the Court prior to the commencement of the Amendment Act and also where the document had been produced by the party though might have not been received by the Court by the said date.

27. There is a different of language in the provisions of Order 13, Rule 2 and the saving clause as Rule 2 of Order 13 does not refer to production of document by the party. The rider had been rather on the Court to receive the document. Therefore, the legislative intent seems to be that where the applications under Order 13 Rule 2 have been filed by the parties and certain documents had been enacted with that application for receiving by the Court and the same have not yet been disposed of, those applications may be delete with under the old provisions.

28. Therefore, it is evident from the aforesaid saving clause that this Court has to examine the orders passed by the Court below in all these cases in the light of the then existing statutory provisions and merely because the said provisions of Order 13, Rule 1 stood deleted, the jurisdiction of this Court has not been taken away to examine the correctness of those orders to be limited issue of exercise of jurisdiction.

29. If the instant case is examined in the light of the aforesaid discussion, it is evident that the learned trial Court has made certain observation that the original document has already lost and whether the document produced as the secondary evidence is genuine or not, the Court, without entering into that issue, has held it to be admissible.

30. Mr. Kawadia, learned Counsel for the plaintiff/non-petitioner has raised the issue

that the petitioner-defendants must raise all these issues before the learned trial Court regarding admissibility of the document and, not in the revision for the reason that it is still open to them to agitate the admissibility of the document in the trial Court. However, Mr. Dave, learned Counsel for the petitioner-defendants, has submitted that the party has to raise the objection, regarding admissibility of the document at this stage and if the objection is not raised, it will not be open for the party to agitate the issue at any later stage in appeal or revision.

31. The submission made by Mr. Dave are full of substance. Nearly Constitution Bench of the Hon'ble Supreme Court, in *Javer Chand v. Pukhraj Surana* ²² has categorically held that the issue regarding admissibility of document must be raised before it is marked as exhibit in the case, and the order of admitting the document in evidence cannot be reviewed or revised. The Apex Court observed as under (at page 1657):-

"Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial Court itself or to a Court of appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction. Therefore, the question of admissibility of the document must be decided by the Court before marking it as an exhibit."

32. While deciding the said case, the Hon'ble Supreme Court had reversed the judgment of this Court in *Ratan Lal v. Daudas*, ²³

33. In *Smt. Mira Bai v. Jai Singh*, ²⁴ this Court has held that where the objection regarding admissibility of a document was not raised, the Court should not have excluded from consideration the secondary evidence produced by the plaintiff to prove the existence or contents of the document. The Court placed reliance upon its earlier judgment in *Maharaja Shree Umaid Mills Ltd. v. Union of India*, ²⁵ wherein it was held that an objection to the mode to prove a document, as distinct from its admissibility, must be taken at the trial before the document is marked as an exhibit and admitted to the record.

34. In *Dhruba Sahu v. Paramananda Sahu*, ²⁶ the Orissa High Court, placing reliance upon the judgment of the Privy Council in *Gopaldas v. Shri Thakurji*, ²⁷ has reiterated

the same view, observing that it is essential that the objection should be taken at the trial, in respect of admissibility of a document, before the document is marked as an exhibited and admitted to the record.

35. Similarly, in *Naladhar Mahapatra v. Seva Dibya*,²⁸ the Orissa High Court placed reliance upon the judgment of the Hon'ble Supreme Court in *P.C. Purushothama Reddi v. S. Permal*,²⁹ wherein it was observed that it is not open to a party to object to the admissibility of the documents, which are marked as exhibits, without any objection from such party. Once a document is properly admitted, the contents of that document are also admitted in evidence.

36. Thus, in view of the above, it is evident that the Court would have admitted the document on record in exercise of its power under Order 13 Rule 2 but as there was an objection from the other side regarding, the admissibility of the document being forged, the same could not have been held admissible in evidence without deciding the issue by a reasoned order.

37. At this juncture, Mr. Kawadia has submitted that the intention of the learned trial Court was merely to admit the document on record and not to hold it admissible in evidence, though the language of the last sentence of the order seems to be "admitted in evidence". He has made the submission that this Court may set aside only that part of the order and give liberty to the parties to agitate the issue regarding admissibility of the document in evidence before the trial Court.

38. Thus, in view of the above, the impugned order dated 10.3.1997 is modified to the extent that the learned trial Court shall give liberty to both the parties to make all legal and factual submissions regarding admissibility of the document before the document is marked as an exhibit and even if it has been marked as an exhibit, the exhibition of the document is set aside and shall be done again by the Court giving an opportunity to the parties after arguing on the issue of admissibility of document in evidence. As there is no dispute regarding leading of secondary evidence and the said order is not under challenge, it is clarified that the same shall remain intact. As the matter remained pending before the trial Court for several years, the trial Court is requested to expedite the trial. The petition stands accordingly disposed of. Interim order, if any, stands vacated. There shall be no order as to costs.

Petition disposed of.

Cases Referred.

1. AIR 1924 Pat517
2. 1907(2) CWN 312
3. AIR 1931 Pat 275
4. AIR 1951 Cal 246
5. AIR 1956 Bom 129
6. AIR 1961 Raj 21
7. AIR 1973 Delhi 112
8. AIR 1973 Delhi 112
9. AIR 1982 Punjab and Haryana 51
10. AIR 1978 Raj 138
11. AIR 1994 Raj 110
12. 1994(1) RLW 294
13. AIR 1946 Nag 377
14. AIR 1966 Cal591
15. AIR 1929 PC 99
16. AIR 1950 PC 68
17. AIR 1976 SC 461
18. 1994(2) R.R.R. 456: 1994(4) SCC 659
19. 1995 Supp.(4) SCC 59
20. 2002(2) R.C.R.(Civil) 361 : 2002(1) SCC 535
21. AIR 2002 SC 100
22. AIR 1961 SC 1655
23. AIR 1954 Raj 173
24. AIR 1971 Raj 303
25. AIR 1960 Raj92
26. AIR 1983 Ori24
27. AIR 1943 PC 83
28. AIR 1991 Ori166
29. AIR 1972 SC 608