

S. Narinder Singh Sachdeva Vs. Mrs. Dimple Sachdeva

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Court : Delhi

Decided On : Jun-30-2015

Judge : Valmiki J. Mehta

Appellant : S. Narinder Singh Sachdeva

Respondent : Mrs. Dimple Sachdeva

Advocate for Pet/Ap. : Mr. Rajiv Tyagi

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CS(OS) No.1292/2005 30th June, 2015 % S. NARINDER SINGH SACHDEVA Plaintiff Through: Mr. Rajiv Tyagi, Advocate. versus MRS. DIMPLE SACHDEVA Through: Defendant None. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) I.A. No.12651/2015 (exemption) 1. Exemption allowed subject to just exceptions. I.A. stands disposed of. O.A. No.235/2015 and I.A. No.12650/2015 (stay) 2. This chamber appeal has been preferred by the plaintiff in the suit impugning the order of the Joint Registrar dated 16.4.2015. The appellant/plaintiff impugns the order dated 16.4.2015 which has allowed further cross-examination of the witness PW-1 after re-examination was done by the plaintiff of the witness PW-1. Plaintiff/appellant contends that the defendant/respondent be not permitted to put questions to the witness PW-1 and

which will be in the nature of cross-examination after reexamination of the witness PW-1.

3. Counsel for the plaintiff/appellant has argued that though under Section 138 of the Evidence Act, 1872 after re-examination is done further questions can be put by the other side to the witness, however, this power to put further questions by the defendant is wrongly being exercised in the facts of the present case. Reliance is placed by the counsel for the appellant/plaintiff on paras 16 to 18 of the judgment of the Supreme Court in the case of Rammi Alias Rameshwar Vs. State of M.P. (1999) 8 SCC649 and which paras read as under:

16. The very purpose of re-examination is to explain matters which have been brought down in cross-examination. Section 138 of the Evidence Act outlines the amplitude of re-examination. It reads thus:

138. * * * Direction of re-examination.-. The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

17. There is an erroneous impression that re-examination should be confined to clarification of ambiguities which have been brought down in cross-examination. No doubt, ambiguities can be resolved through re-examination. But that is not the only function of the re-examiner. If the party who called the witness feels that explanation is required for any matter referred to in cross-examination he has the liberty to put any question in re-examination to get the explanation. The Public Prosecutor should formulate his questions for that purpose. Explanation may be required either when ambiguity remains regarding any answer elicited during cross-examination or even otherwise. If the Public Prosecutor feels that certain answers require more elucidation from the witness he has the freedom and the right to put such questions as he deems necessary for that purpose, subject of course to the control of the Court in accordance with the other provisions. But the Court cannot direct him to confine his questions to ambiguities alone which arose in cross-examination.

18. Even if the Public Prosecutor feels that new matters should be elicited from the witness he can do so, in which case the only requirement is that he must secure permission of the Court. If the Court thinks that such new matters are necessary for proving any material fact, courts must be liberal in granting permission to put necessary questions.

4. The argument urged on behalf of the appellant/plaintiff is misconceived because nowhere in the aforesaid paras 16 to 18 it is stated that further cross-examination of a witness is not permitted after reexamination of the witness. In fact, the language of Section 138 of the Evidence Act, 1872 itself specifically states that with the permission of court, a witness can be further cross-examined. If re-examination under Section 138 of the Evidence Act, 1872 has to be liberally allowed as per the ratio of Rammi Alias Rameshwars case (supra) cited by the plaintiff, then, the further cross-examination also will have to be liberally allowed applying the same ratio and logic.

5. In my opinion, what will apply in the facts of the present case for dismissing this O.A. is the ratio of the judgment of the Supreme Court in the case of Bipin Shantilal Panchal Vs. State of Gujarat and Another (2001) 3 SCC1 and which judgment of Division Bench of three Judges of the Supreme Court states that courts should not prevent bringing of evidence at the stage of trial because in the evidence which is brought in there is some part of evidence which is not admissible or irrelevant, then, the court at the stage of final arguments can always exclude such evidence but disallowing bringing in evidence will result in that evidence not being available and then delay being caused to the case when that evidence will be subsequently directed to be brought in. The relevant paras of the judgment of the Supreme Court in the case of Bipin Shantilal Panchal (supra) are paras 13 to 15 and which read as under:

13. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fall out of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then

proceeds with the trial and disposes of the case finally. If the appellate or revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings.

14. 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 relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.) 15. The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.

(underlining added) 6. The aforesaid paras of the judgment of the Supreme Court in the case of Bipin Shantilal Panchal (supra), and particularly the emphasized portions, show that the appellant/plaintiff is disentitled to scuttle the evidence which is being introduced in the present case by crossexamination of the witness PW-1. In fact, the need for further cross- examination has arisen because re-examination has been allowed to the appellant/plaintiff of the witness PW-1. At the stage of final arguments, it is always open to the appellant/plaintiff to argue the irrelevancy or inadmissibility of any evidence which is introduced in the further crossexamination of the witness PW-1. After all it is not that by allowing further cross-examination that the witness is forced to agree to the questions which will be put in cross-examination and the witness has complete liberty to answer the questions in the way he so thinks fit, and thus, there is no grave prejudice to the plaintiff.

7. In view of the above, the appeal being without any force and an endeavour to unnecessary scuttle the evidence which is being led in the case, is dismissed with costs of Rs.25,000/- to be deposited with the Delhi High Court Legal Services Authority within a period of four weeks from today. JUNE30 2015 Ne CS(OS) No.1292/2005

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