
(2009) 05 RAJ CK 0104
In the Rajasthan High Court

Imran Hussain

APPELLANT

Vs

The District Judge and Others

RESPONDENT

Date of Decision : 13-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 2

Citation : (2009) 3 WLN 4

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Kothari, J.—By this writ petition, the petitioner Imran Hussain has challenged the order of learned trial Court of District Judge, Udaipur dt. 11.02.2008 in Civil Suit No. 34/1985 filed by the plaintiff respondent whereby the learned trial Court rejected the application of the defendant No. 7 the present petitioner before this Court, dt. 23.05.1991 and subsequent application dt. 17.02.2007 filed under Order 13 Rule 2 for taking on record the documents in the form of tape recorded cassette.

2. The learned Counsel for the petitioner-defendant No. 7 Mr. Sajjan Singh urged that merely because some portions of the written statement were struck off by the learned trial Court by the order dt. 11.01.2007, the learned trial Court could not have rejected the said application under Order 13 Rule 2 C.P.C. for taking in evidence the tape recorded cassette, which is admittedly a "document" which can be admitted in evidence merely on this ground, because according to the defendant the said tape recorded cassette of 1973 will help the defendant No. 7 in establishing his defence with respect to other averments made by him in the written statement and, therefore, the reason assigned by the learned trial Court is not justified.

3. On the other hand Mr. D.R. Bhandari, learned Counsel appearing for the plaintiff-respondent submitted that the said tape recorded cassette is a electronic

document and, therefore, without satisfying the condition of Section 65(2) of the Act, the same cannot be admitted in evidence and, therefore, the learned trial Court has not committed any error in rejecting the said application of the defendant No. 7.

4. Having heard learned Counsels and upon perusal of the impugned order, this Court is satisfied that the reason assigned by the learned trial Court for rejecting the said application is not justified. Merely because some portion of the written statement was struck off by the learned trial Court, it is not necessary that the tape recorded cassette which admittedly falls within the definition of "document" which may be helpful in proving the other averments made in the written statement by the defendant, cannot be taken in evidence. The defendant No. 7 has stated in his application that the said original cassette is lying with him and his secondary evidence in form of said tape recorded cassette or script thereof can be admitted in evidence only upon production of the original tape recorded cassette, the same could not have been rejected by the learned trial Court for the aforesaid reason. Without the said tape recorded cassette being on record, it cannot be ascertained whether the speech therein belongs to the plaintiff or not and whether the same solely pertains to the pleadings already on record or struck off portions of the written statement.

5. Consequently this writ petition is allowed and the impugned order dt. 11.02.2008 is set aside and the application filed by the plaintiff-defendant No. 7 under Order 13 Rule 2 C.P.C. and the under Order 8 Rule 1A(3) of C.P.C. are allowed. No order as to costs.