
(2015) 07 MAD CK 0322

In the Madras High Court

Case No : C.R.P. (PD) (MD) No. 460 of 2014 and M.P. (MD) No. 1 of 2014

K. Natarajan

APPELLANT

Vs

Thangaiah

RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 154

Citation : (2015) 5 CTC 86 : (2015) 4 LW 257 : (2015) 5 MLJ 707

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : T.A. Ebenezer, for the Appellant; S. Ramesh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K.K. Sasidharan, J.

Introductory:

1. Whether interlocutory application to declare a witness hostile and permit his cross-examination, after concluding the evidence, at the instance of party, at whose instance the witness was called, is maintainable, is the sum and substance of the issue raised in this Civil Revision Petition.

Factual Matrix:

The respondent filed a suit for declaration and permanent injunction. The petitioner was arrayed as first defendant. The suit was contested by the petitioner.

2. Before the Trial Court, the respondent examined P.W. 3. The witness was cross-examined by the petitioner on 20 August, 2013. After cross-examination, evidence of P.W. 3 was closed. Thereafter, the respondent filed an application in I.A. No. 787 of 2013 to declare P.W. 3 as hostile and grant him permission for

cross-examination. The application was filed on 29 August, 2013.

3. The application was allowed by the learned Trial Judge, in spite of the objection raised by the petitioner. The order dated 06 November, 2013, is the subject matter of this Civil Revision Petition.

Summary of Submissions:

4. The learned counsel for the petitioner contended that the petitioner cross-examined P.W. 3 on 20 August, 2013 and closed the evidence. It was only after 9 days, the respondent filed the application to treat P.W. 3 as hostile and grant permission for cross-examination. According to the learned counsel, once a witness produced by a particular party is cross-examined by the other side, it is not permissible to file an application, at a later point of time, for permission to cross-examine the witness treating him hostile.

5. The learned counsel for the respondent submitted that the counsel for the respondent was not present during the time of cross-examination of P.W. 3. According to the learned counsel, it was only after reading the deposition, that the respondent realized that P.W. 3 tendered evidence against his interest and to support the case of petitioner herein. It was only under such circumstances, the respondent filed the application in I.A. No. 787 of 2013 to treat P.W. 3 as a hostile witness and grant permission for cross-examination.

The Statute:

6. Section 154 of the Indian Evidence Act confers jurisdiction on the Court to permit cross-examination by the party who calls a witness. The provision reads thus:

"154. Question by party to his own witness. - (1) The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

(2) Nothing in this section shall disentitle the person so permitted under subsection (1), to rely on any part of the evidence of such witness."

7. The provisions of the Evidence Act would show that the chief-examination of the witness would be conducted by the party, at whose instance, the witness was summoned. Thereafter, he would be cross-examined by the adverse party. Section 154 of the Evidence Act is an exception to the general principle that cross-examination would be conducted only by the adverse party. Section 154 of the Evidence Act therefore gives a discretion to the Trial Court. While exercising discretion, the Court must be convinced that the evidence tendered by the witness examined by a party on his side shows an element of hostility or that the witness has resiled from his earlier statement in material particulars. The Court is, therefore, given a wide discretion to decide the question of hostility.

The Precedent:

8. The Supreme Court in *Sat Paul Vs. Delhi Administration*, AIR 1976 SC 294 : (1976) CriLJ 295 : (1976) 78 PLR 194 : (1976) 1 SCC 727 : (1976) SCC(Cri) 160 : (1976) 2 SCR 11 held that grant of permission to treat a witness as hostile is expedient to extract the truth and to do justice. The Supreme Court observed:

"The discretion conferred by S. 154 on the court is unqualified and untrammelled, and is apart from any question of "hostility". It is to be liberally exercised whenever the court from the witness's demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. Therefore, in the order granting such permission, it is preferable to avoid the use of such expressions, such as "declared" "hostile", "declared unfavorable" the significance of which is still not free from the historical cobwebs which, in their wake bring a misleading legacy of confusion, and conflict that had so long vexed the English Courts".

9. The Supreme Court in *Dahyabhai Chhaganbhai Thakker Vs. State of Gujarat*, AIR 1964 SC 1563 : (1964) CriLJ 472 : (1964) 7 SCR 361 observed that to confine a portion of Section 154 of the Evidence Act to a particular stage in the examination of a witness is to read words in the section which are not there. The Supreme Court further observed that the Court can permit a person, who calls a witness, to put questions to him which might be put in the cross-examination at any stage of the examination of witness, provided it takes care to give an opportunity to the accused to cross-examine him on the answers elicited which do not find place in the examination in chief.

Discussion:

10. The witness cited by the respondent was examined as P.W. 3. His affidavit of chief-examination was recorded on 02 August, 2013. The witness was cross-examined on 20 August, 2013. While he was cross-examined by the learned counsel for the petitioner, P.W. 3 appears to have given certain answers. Since the learned counsel for the respondent was not present, while cross-examining P.W. 3, request was not made immediately to declare the witness as hostile. The application in I.A. No. 787 of 2013 to treat P.W. 3 hostile and permit cross-examination was filed on 29 August, 2013.

11. In the normal course, immediately after the cross-examination, the party on whose behalf the witness was summoned should take a decision to declare him hostile, taking into account the nature of evidence tendered by him. The counsel for the party should be vigilant not only while taking chief-examination. He should bestow his attention even while cross-examining his witness by the opposite party. Then only, he would be in a position to decide whether the witness actually supported his case or an attempt was made to resile from the version given in his chief-examination. In case the party is satisfied that the

witness turned hostile, immediately, he can request the Court to declare him hostile and cross-examination under Section 154 of the Evidence Act.

12. It is true that ordinarily the request to invoke Section 154 of the Evidence Act must come when the witness is in the box. However, there cannot be a general rule that if the request is not made in all cases, when the witness was in the box, the party who calls a witness would be denied of the opportunity later to cross-examine the witness. Section 154 of the Evidence Act itself is a discretionary jurisdiction to be exercised by the Trial Court judicially and in the interest of justice. Since Section 154 is the only provision under which a party calling his own witness is entitled to seek permission of the Court to cross-examine him, such provision should be given a meaningful interpretation. The Court should be given the discretion to entertain the application, even after closing the evidence, in case proper and sufficient reasons are given for the failure to invoke Section 154 of the Evidence Act earlier. There cannot be a straitjacket formula in such cases. It is for the Trial Court to take a decision in the matter, taking into account the facts and circumstances of a given case and in the interest of justice.

Conclusion:

13. The learned Trial Judge, on a consideration of the application filed by the respondent, found that the counsel was not present during the time of cross-examination and as such, the party failed to avail the opportunity to treat the witness hostile and cross-examine him. The discretion was exercised to render justice, after considering the evidence tendered by the witness, and attending circumstances.

14. The learned Trial Judge allowed the application filed by the respondent, taking into account the spirit of Section 154 of the Evidence Act. There is no illegality or irregularity in the said order warranting interference, by exercising the revisional jurisdiction under Article 227 of the Constitution of India. In the upshot, I dismiss the Civil Revision Petition. No costs. Consequently, the connected miscellaneous petition is also dismissed.