

(2009) 11 DEL CK 0369

In the Delhi High Court

Case No : C.M. (M) No's. 692, 702, 9953 and 10057 of 2009

Surinder Kumar Bajaj and Vijay Kumar Bajaj

APPELLANT

Vs

Sheela Rani Pasricha

RESPONDENT

Date of Decision : 30-11-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 14(3)

Constitution of India, 1950 — Article 227

Evidence Act, 1872 — Section 144, 145

Citation : (2009) 11 DEL CK 0369

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Manbir Singh, in C.M.M Nos. 692, 702, 9953 and 10057/200, for the Appellant; V.K. Arora and Pankaj Agarwal, in C.M.(M) Nos. 692, 702, 6929, 9953 and 10057/2009, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—Both these petitions under Article 227 of the Constitution of India entail common question of law and fact and are taken up together for consideration. The petitions are preferred by two tenants from the eviction proceedings instituted by the respondent against each of them from adjoining shops. It appears that both the eviction petitions are pending before the same Additional Rent Controller and are being taken up on the same day for hearing. These petitions have been filed challenging the identical orders dated 9th April, 2009 in each of the petitions for eviction.

2. It appears that the respondent/landlady in support of her case has examined as PW3 an architect. A copy of the affidavit by way of examination in chief of the said witness has been placed on record. The said architect has deposed as to having inspected the premises with respect where to petitions for eviction have been filed and having submitted a report with respect to the said premises including as to the changes made by the tenants therein. The said architect was

partly cross examined by the counsel for the petitioners/tenants. During the said cross examination, the counsel for the petitioners/tenants sought to show certain photographs, allegedly of the premises in dispute, to the said architect in an attempt to falsify his report. The counsel for the respondent/landlady objected that the witness could not be confronted with the documents not on record. The said objection was upheld by the Additional Rent Controller and it appears that the cross examination was deferred. The petitioners/tenants before the next date of hearing filed applications under Order 8 Rule 1A of the CPC to file the said photographs. It was stated in the said applications that the said photographs could not be filed earlier as the occasion for filing the same occurred only upon the report being submitted by the architect. The Additional Rent Controller vide orders dated 9th April, 2009 in each of the petitions dismissed the said applications *inter alia* on the ground that witness can only be confronted with documents which are prepared by him or to which he is a witness or a scribe. Thus, it was held that the architect witness could not be confronted with the photographs. Yet another reason given was that the photographs were without negatives.

3. This Court while issuing notice of the petitions stayed the further cross examination of the said architect witness. The respondent has filed a counter affidavit/reply contending that the petitions are not maintainable as the orders are merely procedural and do not affect the rights or liabilities of the parties and do not touch the merits of the case; that the petitioners have not exhausted the remedy of appeal before the Rent Control Tribunal. Besides the aforesaid pleas, the respondent has reiterated that a witness can only be confronted with documents which are prepared by him and to which he is a witness or a scribe.

4. The counsel for the respondent has relied on *The Central Bank of India Ltd. v. Gokal Chand* 3 (1967) DLT 1 laying down as to against which order of the Controller an appeal lies to the tribunal; on *Gian Wati v. Ranpat Singh* 1971 RLJ 830 where an appeal to the tribunal against an order allowing amendment was held to be not maintainable; on *Mohd. Yunus Vs. Mohd. Mustaqim and Others*, on the scope of jurisdiction under Article 227 of the Constitution of India and lastly on the order dated 12th November, 2009 in CM(M) 569/2008 titled *Team Computers P. Ltd. v. Suresh Jha* and the reliance whereupon by the respondent is incomprehensible.

5. The orders impugned in these petitions cannot be said to be such which are appealable before the tribunal. In fact, the counsel for the respondent/landlady was himself taking contrary stands in this regard. Sometimes it was argued that the order is appealable before the tribunal and sometime it was urged that it is not.

6. Order 7 Rule 14(3), Order 8 Rule 1A(4) and Order 13 Rule 1(3) all provide that the rule for filing a document alongwith pleadings and/or before the settlement of issues does not apply to documents with which a witness may be confronted in his cross examination. The question which arises is as to with what

documents a witness can be confronted; whether with those mentioned in Sections 144 and 145 of the Evidence Act only or with others also. In the opinion of this court, no limitation can be placed on the documents which can be confronted to the witness. The present case itself gives a classic illustration in this regard. The witness is an architect who claims to have inspected the property and reported that the tenants have carried out unauthorized changes in the property and which changes have lowered the value, utility or security of the building. The endeavour of the cross examining party would be to falsify the said report. The same can be done by showing to the said witness the photographs or other material which would run contrary to the testimony or report of the said witness. Such material would not necessarily be one to which the witness would be a signatory or a scribe. The said material can be in the form of photographs and from the replies of the witness to the said material it can be established whether the witness has visited the property or not and has inspected the same or not and whether his reporting is correct or not. For instance if the witness has deposed as to the weakening of the structure by removal of a wall and if from the photograph it is apparent that the wall was merely the partition wall and the structure is otherwise supported by pillars and beams then I see no reason why such photographs cannot be shown to the witness and/or why he cannot be confronted with the same.

7. The contention qua negatives is also not correct. The negatives are required when photographs are sought to be proved in examination in chief and not when used for confronting the witness.

8. Accordingly, the petitions succeed. The orders impugned in the petitions are set aside and it is held that the petitioner/tenant shall be entitled to confront the witness with such material as may be relevant or have a direct bearing to the report given by the architect.

9. The counsel for the respondent has then contended that the documents were not filed at the appropriate time. The said argument has no bearing in view of what has been held hereinabove. Even otherwise, the filing of the said documents was required only upon the report being filed by the architect.

10. The petitions are allowed. The petitioners/tenants shall be entitled to confront PW3 with photographs filed, irrespective of whether negatives thereof are filed or not. No order as to costs.