
(2014) 07 SHI CK 0094
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 39 of 2014

Tilak Raj

APPELLANT

Vs

Sarla Devi

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1A
Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 65

Citation : (2014) 07 SHI CK 0094

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Advocate : N.K. Thakur, Senior Advocate and Ramesh Sharma, Advocate for the Appellant; Ajay Sharma, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—In this petition, filed under Article 227 of the Constitution of India, petitioner, who is plaintiff before the Court below, has assailed the order dated 27.11.2013, passed by Civil Judge (Junior Division), Court No. IV, Una in CMA in Civil Suit No. 15 of 2009, titled as Tilak Raj v. Smt. Sarla Devi, allowing the respondent's (defendant herein) application for placing on record document (Audio Cassette).

2. Plaintiff filed a suit for recovery of arrears of rent. During the course of trial, plaintiff denied having received the suit amount. According to the defendant, plaintiff had admitted receipt thereof, which conversation was tape-recorded. In this backdrop, defendant filed an application, seeking permission of the Court to place on record certain documents. Trial Court has allowed the same.

3. Having heard learned counsel for the parties as also perused the record, I am of the considered view that the order passed by the trial Court is legally sustainable and cannot be said to be perverse, erroneous or illegal in any manner.

4. Trial Court has simply allowed the document to be placed on record, under the provisions of Order 8 Rule 1A of the Code of Civil Procedure.
 5. There is a difference between admissibility and relevancy of the document. (See: Ram Bihari Yadav Vs. State of Bihar and Others,).
 6. The apex Court in The State of Maharashtra and P.C. Singh Vs. Dr. Praful B. Desai and Another, , has held: "evidence" so defined under the Indian Evidence Act, 1872, can be both oral and documentary and can be produced by way of electronic record, including video conferencing.
 7. To the same effect is the earlier decision of the apex Court in Ziyauddin Burhanuddin Bukhari Vs. Brijmohan Ramdass Mehra and Others, , wherein tape-recorded speeches of parties have been held to be a document.
 8. Principles for determining admissibility of such a document has been considered by the apex Court in Ram Singh and Others Vs. Ram Singh, .
 9. Whether the document is admissible under the provisions of the Evidence Act is a question which the trial Court has left open to be decided during trial.
 10. Trial Court rightly held that in the event of denial of document by the plaintiff, onus to prove the same would be on the defendant.
 11. Hence, impugned order cannot be said to be unreasonable, illegal and perverse, warranting interference by this Court, under Article 227 of the Constitution of India. [Waryam Singh and Another Vs. Amarnath and Another,].
 12. Needless to add while determining the issue of admissibility of document, the Court shall take into account the relevant provisions of the Indian Evidence Act, 1872, more specifically Section 65.
 13. Any observation made hereinabove shall have no bearing whatsoever on the merits of the main case. Parties, through their learned counsel, are directed to appear before the Court below on 26.8.2014.
 14. For all the aforesaid reasons, present petition, devoid of merit, is dismissed. Interim order, if any, stands vacated.
- Petition stands disposed of, so also pending application(s), if any.