

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

CIVIL REVISION PETITION No.2479 2023

Between:

M/s. Adarsh Bio-Tech Private Limited,
Rep., by its Managing Director,
T.Babu Rao, Aged 55 years, Occ: Business,
Office at 2-11-637, P.M.R. Complex, Above Andhra Bank,
Nagole, Hyderabad and another.

.....Petitioners

And

M/s. Srinivasa Polymers, Rep., by its
Proprietor, S. Santhi Sree, W/o S.
Ravichandar, Aged 44 years, Occ:
Proprietor, Plot No.375, Sy. No.248,
Subashnaga, Jeedimetla, Ranga
Reddy District and three others.

.....Respondents

Date of Judgment pronounced on : 08-09-2023

HONOURABLE SRI JUSTICE T.VINOD KUMAR

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : **Yes**
to Law Reporters/Journals:
3. Whether His Lordships wishes to see the fair copy : Yes/No
of the Judgment?

T. VINOD KUMAR, J

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

CIVIL REVISION PETITION No.1512 2023

% 08-09-2023

M/s. Adarsh Bio-Tech Private Limited,
Rep., by its Managing Director,
T.Babu Rao, Aged 55 years, Occ: Business,
Office at 2-11-637, P.M.R. Complex, Above Andhra Bank,
Nagole, Hyderabad and another.

..... Petitioner

Versus

\$ M/s. Srinivasa Polymers, Rep.,
by its Proprietor, S. Santhi Sree,
W/o S. Ravichandar, Aged 44
years, Occ: Proprietor, Plot
No.375, Sy. No.248, Subashnaga,
Jeedimetla, Ranga Reddy District
and three others.

..... Respondents

< GIST:

> HEAD NOTE:

!Counsel for the Petitioner : Sri. C. Kumar,

^Counsel for the respondents : -

? Cases referred

¹ (1999) 7 SCC 280

² (2005) 4 SCC 370

³ 1975) 3 SCC 529

⁴ 2005 SCC OnLine AP 43 : AIR 2005 AP 253

⁵ MANU/TL/0391/2023

⁶ (2009)13SCC25

⁷ MANU/BH/0317/2013 : 2014 (2) PLJR 535

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

CIVIL REVISION PETITION No. 2479 of 2023

ORDER:

1. This Civil Revision Petition is filed aggrieved by the order dated 08.07.2023 in I.A.No. 422 of 2023 in O.S.No. 378 of 2014 passed by the II Additional District and Sessions Judge, Medchal-Malkajgiri District, at Mechal.
2. Heard Sri. C. Kumar, learned counsel for the petitioner and perused the record.
3. The petitioners herein are the Defendants No. 1 & 2 in the suit filed for recovery of money by the Respondent No.1 herein as plaintiff.
4. The Respondent No.1 herein, filed an interlocutory application in the suit under Order 16 Rule 1 of the Code of Civil Procedure, 1908 (for short 'the Code') seeking to summon the 'Assistant Director, State Forensic Laboratory Telangana State, at Red Hills' along with FSL Report/Opinion *vide* Report file No. DCV/523/2018 dated 23.02.2019. The Respondent No.1 claimed that the said document was adduced as evidence in C.C.No.44 of

2012 before the XV M.M. Cyberabad Medchal, Ranga Reddy District, wherein the petitioners herein were convicted for offences under Section 138 of the Negotiable Instruments Act, 1881. The Court below *vide* the impugned order dated 08.07.2023 allowed the said application. The present revision is filed aggrieved by the said order.

5. It is the case of the petitioners herein that they had preferred Crl.A.No. 734 of 2014 before the III Additional Metropolitan Sessions Judge, Ranga Reddy District, at L.B. Nagar, against the conviction in C.C.No.44 of 2012; and that *vide* order dated 28.11.2019, the petitioners herein were acquitted. That apart the petitioners herein contend that the Respondent No.1 had failed to prove the said FSL report by cross-examining the handwriting expert before the trial Court in C.C.No.44 of 2012. By placing reliance on the decision of the Apex Court in ***State of Himachal Pradesh Vs. Jai Lal***¹, it is contended that a report submitted by an expert cannot be automatically admitted in evidence unless the said expert is examined as a witness. Thus, it is contended that since the

¹ (1999) 7 SCC 280

FSL report in question was not proved by the Respondent No.1 in C.C.No. 44 of 2012, no reliance can be placed on the said document.

6. The petitioners further contend that, evidence forming part of and adduced in a criminal case cannot be considered in a civil proceeding, as the standard of proof in both proceedings is different. In support of the above contention, reliance is placed on the decisions of the Apex Court in *Iqbal Singh Marwah Vs. Meenakshi Marwah*², and *Mitthulal & Anr Vs. State of Madhya Pradesh*³.

7. Learned counsel for the petitioners thus contends that, the proper course of action in such cases would be to make a fresh application to send the document for expert opinion under Section 45 of the Indian Evidence Act, 1872.

8. I have taken note the submissions made.

² (2005) 4 SCC 370

³ (1975) 3 SCC 529

9. A party to the suit who is not in a position to summon a witness on whose evidence he seeks to place reliance on, may make an application to the Court seeking to summon such a person as a witness or to produce any document. Order 16 of the Code provides the procedure for a party seeking to summon such witnesses who are beyond his control (*see Smt. Rita Pandit Vs Atul Pandit*⁴).

10. Since the issue at hand revolves around summoning of a witness by a Court it is relevant to discuss the scheme of Order 16 of the Code. Under Order 16 of the Code the court can summon a witness in exercise of powers under Rule 1 as well as under Rule 14. It is ordinarily understood that a witness under the former is summoned at the behest of a party to the suit, while under the latter he is summoned in exercise of the court's *suo moto* power, as a court witness.

11. In order to summons a witness under Order 16 Rule 1 of CPC, a party to the suit is required to give a list of witnesses he intends to examine, within 15 days from the date of framing the

⁴ 2005 SCC OnLine AP 43 : AIR 2005 AP 253

issues. However, on showing sufficient cause, the Court under Sub-Rule (3) can permit a party to examine a witness whose name was not mentioned in the list of witnesses, by summoning him. Therefore, in order to summon the proposed witness(s) under Order 16 Rule 1(3) of CPC, sufficient cause for omission from the list of witnesses has to be shown by a party making an application.

12. This Court in *Pradeep Manoj Farms Pvt. Ltd. and Ors. and Ors. Vs. Duggirala Vidya Sagar Ra and Ors*⁵, held that an application filed under Order 16 Rule 1 of the Code, can be allowed by the Court in exercise of powers under Order 16 Rule 14 of the Code. The relevant observations are as under:

“21. Therefore, a party intending to summon an omitted witness under Order 16 Rule 1(1) of CPC, can make an application to the court under Order 16 Rule 1(3) of CPC, to condone such a lapse by showing sufficient reason. The court on consideration of the application has a discretion to either allow or disallow the same. **However, if the court for any other reason comes to a conclusion that the proposed witness is crucial, it can consider the application filed under Order 16 Rule 1 of CPC as information, and issue summons to the witness by invoking suo moto powers under Order 16 Rule 14 of CPC. Summoning of such witness would not defeat the right of the opposite party, as they can exercise their right to cross-examine.**

22. Further, the words "at any time thinks it necessary" in Order 16 Rule 14 of CPC are not fettered or curtailed to any particular stage of suit. Therefore, it is understood that wide discretion is vested in the court, to summon a witness in exercise of powers under Rule 14, once it concludes that it

⁵ MANU/TL/0391/2023

is necessary for proper adjudication. The contention of the petitioners that, powers of a court under Order 16 Rule 14 of CPC cannot be exercised in an application filed under Order 16 Rule 1 of CPC, cannot be accepted as the provision does not confine exercise of such powers only to specific circumstances. It would be for the court to decide if a situation warrants intervention under Order 16 Rule 14 of CPC.”

The said decision of this Court was affirmed by the Hon’ble Supreme Court in S.L.P.(C). No. 12273 of 2023.

13. In the facts at hand, though the petitioners sought to contend that the FSL Report cannot be relied on, as the expert who authored the document was not cross-examined in C.C.No. 44 of 2012, this Court is reluctant to accept the said submission for the reason that the prayer of the underlying application is to **summon** the ‘Assistant Director, State Forensic Laboratory Telangana State, at Red Hills’ **along with** FSL Report/Opinion *vide* Report file No. DCV/523/2018 dated 23.02.2019. Further, the Court below while allowing the interlocutory application observed that there was merit in summoning the expert as a witness along with the FSL report, in order to prove the FSL report. The said observation by itself neither decides the relevance nor the validity of the said FSL Report. In other words, merely summoning a witness to produce a

document does not imply that a decision on the relevancy of the document was taken.

14. The contention of the petitioners that evidence in a criminal case cannot be considered in civil proceedings shall now be examined.

15. Order 13 Rule 10(1) of the Code provides that a Court may on its own discretion or on an application filed by the parties, call for records of any suit or proceedings from other Courts. Firstly, it is to be seen that the legislature in its wisdom has employed the words '*any suit or proceeding*' without any caveat on the same being curtailed to certain specific proceedings. Thus, the contention of the petitioner that the evidence in a criminal case cannot be considered in a civil case does not appeal to this Court for being accepted.

16. Further, the Hon'ble Supreme Court in ***Lakshmi and Ors. Vs. Chinnammal and Ors***⁶, while examining the powers of Civil Court under Order 13 Rule 10 of the Code, to summon and inspect

⁶ (2009)13SCC25

records of other Courts in any proceeding held that the report of a forensic expert given in a criminal case could be summoned in a suit. The relevant observations are as under:

“12. If bringing on record a document is essential for proving the case by a party, ordinarily the same should not be refused; the Court's duty being to find out the truth. **The procedural mechanics necessary to arrive at a just decision must be encouraged.** We are not unmindful of the fact that the court in the said process would not encourage any fishing enquiry. It would also not assist a party in procuring a document which he should have himself filed.

14. **In a Civil Suit, a document has to be proved. The report of an expert is also required to be brought on record in terms of the provisions of the Indian Evidence Act.** Having regard to the provisions contained in Order XIII, Rule 9(1) first proviso (a)(i) of the Code, the Civil Court would furthermore be entitled to substitute the original document by a certified copy. **We, therefore, fail to appreciate as to why the said original document could not be called for...**

...In *Uday Shankar Triyar v. Ram Kalewar Prasad Singh and Anr.* MANU/SC/2173/2005 : AIR2006SC269 , it was observed:

17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. **Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a hand- maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. ...**

15. In view of the aforementioned pronouncements, we are of the opinion that the learned Trial Judge should have acceded to the prayer of the appellants herein.”

17. The High Court of Patna while dealing with an identical issue in *Ram Jatan Rai Vs. Sita Ram Singh and Ors*⁷, held that when a report submitted in a criminal case is proved by the

⁷ MANU/BH/0317/2013 : 2014 (2) PLJR 535

evidence of expert in the civil case, the said expert opinion/report shall become evidence in the civil case. The relevant observations as under:

“22. In view of the evidence of P.W. 10 and D.1-W.11, the question will be as to whether whose report will prevail and which report is to be accepted. Learned counsel for the appellants submitted that the basis for giving this report (Ext. 21) has not been submitted before the court and only an opinion was given, therefore, this report is not reliable. Moreover, the report was obtained in criminal case, therefore, it is not admissible in civil case. So far this submission is concerned, it may be mentioned here that the report is being proved by one of the experts, who is P.W. 10. **The report was called for from the said criminal court which is being proved here. In such circumstances the evidence, which was collected during the course of investigation in criminal case, was called for by the court and when the expert proved the report in civil case, the said report became the evidence in this civil case.**

24. This provision of the Code of Civil Procedure has been interpreted by the Hon'ble Supreme Court in the case of Lakshmi and another Vs. Chinnammal alias Rayyammal and others reported in MANU/SC/0543/2009 : (2009) 13 SCC 25. The Hon'ble Supreme Court at paragraph 17 has held that in a civil suit where a document is to be proved, the report of an expert may be brought on record in terms of the provisions of the Evidence Act. Having regard to the provisions contained in Order XIII Rule 9(1) first proviso (a) (i) of the Code, the Civil Court would furthermore be entitled to substitute the original document by a certified copy. It appears that in that case in the civil suit the concerned officer refused to call for the report of the expert. Hon'ble Supreme Court set aside the order and held that if bringing on record a document is essential for proving the case by a party, ordinarily the same should not be refused; the court's duty being to find out the truth. The procedural mechanics necessary to arrive at a just decision must be encouraged though the court in the said process would not encourage any fishing enquiry. In that case also it appears that the Forensic Science Laboratory Report was called for. **Here, therefore, it cannot be said that the report of the expert submitted in the criminal case cannot be called for. Here, the expert himself has proved the report and, therefore, in my opinion, the court had the jurisdiction to call for the same and, therefore, rightly the document was also considered after admitting it in evidence.**”

18. The position of law emerging from the above decisions is that the Civil Court, is not barred from calling for and inspecting the evidence tendered in a criminal proceeding. However, admissibility and relevance of the same is subject to the document being proved as per the provisions of the Indian Evidence Act, 1872.

19. In the facts at hand, the FSL Report is a document obtained during the course of trial in a criminal proceeding. Though the petitioners herein contend that the said document cannot be let into evidence as the same was not proved during cross-examination in C.C. No.44 of 2012, it is to be seen that the Court below has issued summons to Assistant Director to produce the document for perusal and to adduce evidence with respect to the FSL report so produced. At the cost of repetition, the scope of the impugned order is to only summon a witness and produce the document available with him for inspection of the Court. The question of letting it into evidence has to be determined by the Court below on the cross-examination of the expert witness summoned.

20. The decision of the Apex Court in *Jai Lal's* case (supra) supports the view taken by this Court, as the Apex Court held that the report of an expert can only be let into evidence after the expert is cross-examined.

21. So far as the reliance placed by the learned counsel for the petitioner on the decision in *Iqbal Singh Marwah's* case, it is to be seen that the Hon'ble Supreme Court had held that the findings recorded in criminal/civil proceedings are not always binding on the Court dealing with civil/criminal proceedings arising out of the same facts, since it would depend on the evidence adduced and the standard of proof applicable to that particular proceeding. The said decision therefore, does not advance the case of the petitioners as the impugned order does not venture into the findings given in the criminal proceedings.

22. Similarly, the decision *Mitthulal's* case (supra) does not support the case of the petitioners, as in that case the Court had solely arrived at a conclusion on the evidence recorded in cross-case involving several other accused persons. In the facts at hand as observed above on the Assistant Director/expert submitting himself

to cross-examination, the document obtained during the course of trial in C.C. No.44 of 2012 becomes the evidence in the underlying suit.

23. In the light of the aforesaid discussion, this Court is of the view that the impugned order does not suffer from any infirmity.

24. Accordingly, the Civil Revision Petition dismissed. The order dated 08.07.2023 in I.A. No.422 of 2023 in O.S. No.378 of 2014 passed by the II Additional District and Sessions Judge, Medchal-Malkajgiri District, at Mechal is hereby sustained.

25. Consequently, miscellaneous petitions pending if any shall stand closed. No order as to costs.

T. VINOD KUMAR, J

Date: 08.09.2023

VSV/MRKR