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IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 29TH DAY OF MARCH 2010

BEFORE

THE HON'BLE MR. JUSTICE ARAVIND KUMAR

CIVIL REVISION PETITION NO.67 OF 2010

BETWEEN:

1. M/s. Khivraj Motors
A Registered Partnership Firm
Having its Office at No.10/2
Kasturba Road,
Bangalore - 560001.
Duly represented by its partners

2. Mr. Devraj Chordia

3. Mr. Sainikraj Chordia

4. Mr. Prafulchand Chordia

5. Mr. Jeth mull chordia

All r/at No.10/2
Kasturba Road
Bangalore - 560001.
All duly represented by
Mr. Ganesh Hegde
S/o Sri. Ganappaya Hegde
Business Manager
Working at 1st Petitioner Firm

... PETITIONERS

[By Sri. B.S. Satyanand, Adv.]

AND:

Smt. Sathya D. Sampath
W/o Sri. D. Sampath
Aged about 60 years
Residing at No.35/8,
Langford Road, Langford Town
Bangalore - 560025.

... RESPONDENT

This CRP is filed U/S. 115 of Civil Procedure Code against the order dated 12.03.2010, passed in O.S.No.9571/2006, on the file of the X Additional City Civil & Sessions Judge, Bangalore, (CCH 26), inadmissibling in evidence of xerox copy of an unregistered lease agreement dated 01.10.2002 confronting in the cross examination of PW.1 and etc.,

This Petition coming on for Admission this day, the court made the following:

ORDER

The defendant is questioning the order dated 12.03.2010 passed in O.S.No.9571/2006 invoking the revisional jurisdiction of this Court under Section 115 of Civil Procedure Code whereunder the orders passed by the Trial Court on admissibility of Photostat copy of unregistered lease agreement when confronted to the



witness in the cross-examination has been refused to be taken on record.

2. The facts in nutshell are as follows:

The suit for ejection was filed by the respondent herein against the petitioner in O.S.No.9571/2006 and respondent/plaintiff got herself examined as PW.1. During the course of cross-examination a suggestion was put to PW.1 as to whether there was in existence any written lease agreement between the parties and initially the said witness denied about the existence of any such written lease agreement. Subsequently when the witness was confronted with a Photostat copy of a unregistered lease agreement dated 01.10.2002, the witness PW.1 admitted that there was such lease agreement between the parties. However she contended that period of lease had expired. At that point of time the Counsel for the defendant insisted for the Photostat copy of the unregistered lease agreement to be marked

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as an exhibit on the ground that witness had admitted about the existence of such document namely agreement of lease dated 01.10.2002. Marking of the said document came to be opposed by the learned Counsel for the plaintiff on the ground it is a Photostat copy and it cannot be marked. In view of the contentions raised by the learned Advocates appearing for the parties, the Court below framed the following point for its consideration:

"Whether the xerox copy of the unregistered lease agreement dated 01.10.2002 confronted to PW.1 in her cross-examination requires to be marked as an exhibit in the evidence?"

3. Considering the arguments advanced by both the sides, Court below by its order dated 12.03.2010 rejected the claim of the defendant to get the Photostat copy of the unregistered lease agreement marked in cross-examination of PW.1.



It is this order which is now being questioned in the present revision petition by invoking Section 115 of Civil Procedure Code.

4. The learned Counsel Sri. Satyanand appearing for the revision petitioners having submitted his arguments on merits has also contended that revision petition is maintainable against the order dated 12.03.2010 as the document in question would go to the root of the matter and it would be a suit document. In support of his submission he relies upon the decision of this Court reported in the case of **K. ANJANEYA SETTY vs. K.H. RANGIAH SETTY** reported in **ILR 2002 Kar 3613** regarding maintainability by drawing the attention of this Court to Para 26 which reads as under:

"26. The argument that if such orders are allowed to be challenged in revision and in such petitions if order of stay is granted in respect of further proceedings of the suit, it would drag on the proceedings endlessly and



therefore the revision is held to be not maintainable on the premise that such order does not amount to "case decided", is concerned the very object is defeated if after the final disposal of the suit, the appellate Court were to find fault with such orders and consequently orders for remand of the matter to the trial Court, the duration taken for disposal of such matters would be enormous. Moreover when the matters are remanded the original parties may not be alive and the very object would be frustrated. The said complaint can be remedied by not admitting the revision petitions and by ordering notice to the counsels who are appearing in the Court below and dispose of such Revision Petitions expeditiously at the admission stage itself. These problems are agitating the legal fraternity for quite some time and merely because we are unable to find a practical solution it cannot be said that the Revision Petition should not be entertained at all. In fact the Supreme Court taking note of these problems has suggested a solution by prescribing the following procedure in a recent



decision in the case of **BIPIN SHANTILAL PANCHAL vs STATE OF GUJARAT AND ANOTHER (supra)** has held as under”.

5. A perusal of the order passed by the Court below and also the plea raised in the written statement, the following points arise for my consideration:

- (i) Whether the revision petition is maintainable under Section 115 of Civil Procedure Code?
- (ii) If so, whether the order passed by the Court below dated 12.03.2010 rejecting the claim of the defendant to get the document marked suffers from any infirmity either in law or on facts?
- (iii) What order?

6. In order to appreciate the contention regarding maintainability of the Revision Petition it would be necessary to extract Sec.115 of Civil Procedure Code, which reads as under:



115. Revision.- (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the

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High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

Explanation.- In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.

Since answering question No.1 formulated herein above would have a direct bearing for considering the other two questions, the first question formulated herein above is taken up for consideration. It is to be noticed that suit is filed for ejection of the defendants from the suit schedule property. The contention of the plaintiff is that defendants were inducted as tenants on a monthly rent of Rs.50,000/- and the date of commencement of tenancy was with effect from 01.09.2002 and tenancy runs from month to month. The defendant on entering



appearance has filed the written statement and with reference to the plea put forward by the plaintiff, defendant admits in Para 9 of the written statement about induction of the defendants as tenants on a monthly rent of Rs.50,000/-. However the contention of the plaintiff with regard to the tenancy being month to month as also the date of commencement of tenancy is denied.

7. During the course of cross-examination of PW.1 plaintiff-PW.1 at the initial stage denied about the existence of any written lease agreement existing between the parties, subsequently she has admitted that there was such a lease agreement executed. Admittedly the plaintiff is claiming to have terminated the tenancy by issue of notice and it goes without saying that burden is on the plaintiff to establish the said fact, even otherwise, admitted facts need not be proved as per Section 58 of the Evidence Act. When



such being the factual matrix the contention of the learned Counsel for the petitioner that documents in question is to be construed as a suit document cannot be acceded to for the simple reason, that said document if either allowed to be marked or otherwise negatived would not alter or change the nature of the claim set up by the defendant and would not materially affect the ultimate decision as held in the same judgment at para 25 which reads as under:-

"25. However, it is also not possible to hold that in all cases of either admitting a document or refusing to admit a document such order would amount to "case decided". Each case and the order passed has to be taken in the context of the facts of the particular case, the nature of the document and the effect of the either admission of a document or refusing to admit the said



document. Broadly speaking it could be safely said the document sought to be marked if it is a suit document or if it is in the nature of a suit document, or if the document on which the entire defence of the defendant is based or if admission or refusing to admit such document would materially affect the ultimate outcome of the suit or a right of the party is decided finally, the order admitting or refusing to admit such document could be held to amount to "case decided". However, if the document do not fall in any of those categories and are produced as a piece of evidence in support of the main case or defence, mere marking or refusal to mark such document cannot be said to amount to "cases decided". Therefore, it cannot be said as a general rule that an order either admitting the document or refusing to admit

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the document is not revisable as it does not amount to a "case decided".

A perusal of the plea raised in the written statement does not depict that entire defence is based on the said document. Hence, it would neither alter the nature of defence nor non-marking of same would amount to 'case-decided'.

8. On the other hand as seen from the order passed by the Court below, there is an admission of fact by the plaintiff-PW 1 herself about the existence of the agreement. When such being the case it is to be noticed that order passed by the Court below would not fall within the four corners of "**finally disposed**" and as such this Court is of the opinion that the revision petition is not maintainable.

9. Accordingly question No.1 formulated herein above is answered by holding that revision petition is



not maintainable. In view of question No.1 having been answered in the negative, considering questions No.2 and 3 does not arise and accordingly the same are not considered.

Hence, the following order is passed:

ORDER

The revision petition is dismissed as not maintainable. No order as to costs.

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Sd/-
JUDGE