



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMO No. 356 of 2023
Decided on : 23.09.2025

Smt. Amar Kaur and others

...Petitioners

Versus

Sh. Rishib Kumar

...Respondent

Coram
Hon'ble Mr. Justice Ajay Mohan Goel, Judge
Whether approved for reporting?¹ Yes

For the petitioners : Mr. G.D. Verma, Senior Advocate,
with Mr. Sumit Sharma, Advocate.
For the respondent : Mr. Lovneesh Kanwar, Senior
Advocate, with Mr. Tek Chand,
Advocate.

Ajay Mohan Goel, Judge (Oral)

By way of this petition, the petitioners have assailed order dated 21.02.2023, passed by learned Additional District Judge, Sarkaghat, District Mandi, in CMA No. 75/2022, titled Roop Lal & anr. Vs. Rishib Kumar & anr., in terms whereof, the application filed under Section 151 of the Civil Procedure Code (hereinafter referred to as 'CPC'), for providing an opportunity to prove the Hindi version of Ex.P2, Ex.P3, Ex.P4 and Ex.P15,

¹Whether reporters of the local papers may be allowed to see the judgment?

was dismissed.

2. Learned Senior Counsel for the petitioners argued that in this case, the above mentioned four documents were exhibited before the learned Trial Court, by the plaintiff. The documents were in Urdu. Hindi translation of the said documents was also filed before the learned Trial Court and these translations are marked documents but they could not be exhibited for want of the examination of the person who translated them on account of his death. In these circumstances, learned Senior Counsel submitted that application was filed before the learned Appellate Court with the prayer that the translated documents be taken on record and an opportunity be granted to the applicants/plaintiffs to prove the Hindi version of these documents through duly authorized Translator by recording his evidence to this effect and justice be done. He submitted that the dismissal of the said application by the learned Appellate Court is completely unjustified in law. He drew the attention of the Court to the impugned order and submitted that the learned Appellate Court misdirected itself and construed as if the prayer of the applicants was to lead

additional evidence, which is also evident from the contents of the last paragraph of the of the impugned order. Learned Senior Counsel submitted that as in this backdrop, the impugned order is not sustainable in the eyes of law, the same be set aside and the prayer, as made in the application before the learned Appellate Court be allowed.

3. On the other hand, learned Senior Counsel for the respondent submitted that as the documents in Urdu were filed before the learned Trial Court, there was ample time with the plaintiffs to have had proved the Hindi translation thereof before the learned Trial Court, which admittedly was not done. He further submitted that though it is pleaded on behalf of the applicant that the gentleman who translated the Urdu documents was no more but nothing was placed on record to demonstrate whether he died after the evidence of the plaintiffs or before that. He further submitted that the suit of the plaintiffs was dismissed by the learned Trial Court. Before the learned Trial Court, no such application was filed by the applicants and the same was preferred only at the time of filing of the Appeal and the intent behind was nothing but to fill up the lacuna.

Accordingly, he submitted that in this backdrop, as there is nothing wrong in the impugned order, the present petition be dismissed.

4. I have learned Senior Counsel for the parties and have also carefully gone through the impugned order as well as other documents appended with the writ petition.

5. The backdrop, in which the impugned order was passed, has been mentioned by me hereinabove. There is no dispute qua the facts that have been narrated by me hereinabove. The reasoning which has been given by the learned Appellate Court while dismissing the application filed by the present petitioners before it, is as under:-

"I have heard id. counsel for the parties and have also perused the case file with minute care.

The power under Section 151 CPC will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the code governing the matter, when the bonafides of the applicants cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court. The power under Section 151 or Order 18 Rule

17 of CPC is not intending to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the code to expedite trials. From the perusal of the record, it also transpired that the appellants had produced all the documents before the Id. trial court. There was ample time for the appellants to prove the document as the suit remained pending from 2005 to 2016 but the applicants did not opt to prove any document. Therefore, the present application is not bonafide and the applicants cannot be allowed to prove any alleged documents. Hence, the application is hereby dismissed. Application stands disposed of. Be registered and tagged with the main case file after due completion."

6. This Court is of the considered that said order passed by the learned Appellate Court while dismissing the application, is not sustainable in the eyes of law. A perusal of the impugned order demonstrates that learned Appellate Court misdirected itself by construing as if the prayer of the petitioner was to be construed on the parameters of Order XVIII, Rule 17 of the CPC. Learned Appellate Court was further influenced by the factum of the life of the proceedings rather than as to what was the intent behind the filing of the application. Learned

Appellate Court erred in not appreciating that the prayer simply was to produce on record the translated copies of the documents which already stood exhibited. Therefore, by no stretch of imagination it was an application to lead additional evidence. Interest of justice would have been served had the learned Appellate Court allowed the application and permitted the applicants before it to either produce the translated copies by having the same circulated to the other party also to point out any infirmity therein or in the alternative, to have had the documents translated from an official Translator of the Court. Failure on the part of the learned Appellate Court to do so renders the impugned order bad in law.

7. At this stage, this Court would like to refer to the judgment of the Hon'ble Supreme Court in *Chandreshwar Bhuthnath Devasthan Vs. Baboy Matiram Varenkar*, (2018) 12 Supreme Court Cases 548. In the said case, Hon'ble Supreme Court was dealing with almost a similar situation. Therein the defendant had exhibited a document which was in Portuguese language before the learned Trial Court. The English translation of the said document was submitted before the first Appellate

Court. First Appellate Court in its judgment observed that as no application was filed under the provisions of Order XLI, Rule 27 of the CPC for producing the additional translation of original document, therefore, such translation could not be taken on record. These findings returned by the learned Appellate Court were upheld by the Hon'ble High Court. When the matter went to the Hon'ble Supreme Court of India, Hon'ble Supreme Court held as under:-

"3. The defendant in support of the title had filed certain documents in Portuguese language in trial court which had been exhibited as 'Exhibit E'. The English translation of the said document was submitted before the First appellate court. The first appellate court in para 43 of its judgment observed that there was no application filed under the provisions of Order XLI Rule 27 of the Code of Civil Procedure, 1908 (in short 'the CPC') for producing the additional translation of the original document. As such translation could not be taken on record prayer had been disallowed for taking english version on record. High Court had also approved the aforesaid view and dismissed the second appeal on the ground that the prayer should have been made under

Order XLI Rule 27 of the CPC to take the translated document on record. In the absence of the application the document could not have been taken on record.

4. We have heard learned counsel for the parties at length. We are of the considered opinion that when the document had been tendered in evidence in Portuguese language, at the time it was not objected. Its translated version into English language could have been filed before the court any time, there was no requirement to file an application for production of the additional evidence under the provisions of Order XLI Rule 27 of the CPC which deals with the production of additional evidence in the appellate court. The document in question in Portuguese language had already been marked as Exhibit E Before the trial court thus it was not a case of additional evidence being adduced. Only translated version of the document was filed. Original was already on record, thus provisions contained under Order XLI Rule 27 of the CPC was not attracted at all. The first appellate court as well as the High Court had committed grave error in law in not considering the document for not filing an application to take additional evidence on record. The translated version of the already

filed document could not be said to be constituting additional evidence as the original document was already on record of the trial court. It was thus in order to facilitate the just decision of the matter and to enable the court to read the document its translated version had been filed which ought to have been taken on record without any demur by the court below. Interest of justice required it to be taken on record being document recording title. Thus the approach of the first appellate court as well as the High Court was palpably illegal, therefore, the judgment and order passed by the first appellate court as well as by the High Court in the Second appeal are thus liable to be set aside and they are hereby set aside.

5. *We remit the case to the first appellate court as it would be appropriate to re-assess the evidence taken into consideration, the translated version of the document Exhibit E after taking it on record. It would be open to both the parties to file translated version of the document and to agree on correct translation.”*

8. Therefore, it is evident from the judgment of the Hon'ble Supreme Court that in a case where a document already stands exhibited and a prayer is to place on record a

translated copy thereof, there is no requirement of filing any application to place on record the translated version of the document and all that the Court has to ensure is that the translated version is the true translated version of the document concerned and for that purpose, as has been held by the Hon'ble Supreme Court also, opportunity should be given to both the parties to file translated version of the document and/or to agree on a correct translation filed by a party. Alternatively, the Court can also get the translation done on the expense of the party through the official Translator.

9. Accordingly, in light of the above observations, this petition is allowed. Order dated 21.02.2023, passed by learned Additional District Judge, Sarkaghat, District Mandi, in CMA No. 75/2022, titled Roop Lal & anr. Vs. Rishib Kumar & anr., is quashed and set aside. Learned Appellate Court is directed to permit the translated copies of the exhibited documents to be taken on record. Because in the present case, the translated copies have already been placed on record by the present petitioners, copies thereof be provided to the other side and in case, there is any discrepancy therein as per the respondent,

the same be pointed out and thereafter, the learned Appellate Court shall take on record the agreed correct translation and proceed with the matter in accordance with law. Parties through counsel to appear before the learned Appellate Court on 14.10.2025 and endeavour be made by learned Appellate Court to decide the case as expeditiously as possible and preferably before 31.03.2026.

10. The petition is disposed of in above terms. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

September 23, 2025
(Shivank Thakur)