$~34 (Appellate)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CM(M) 784/2022 & CM APPL. 34641/2022

RAVINDER SURI & ORS. ..... Petitioners
Through: Mr. Sanjeev Mahajan, Adv.

versus

DAYAWATI (SINCE DECEASED) THR LRS .... Respondent
Through: Mr. Ajay Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (ORAL)

% 01.09.2022

1. Eviction Petition E-155/2014 (New No. 77604/2016) was instituted by the respondent Dayawati against the petitioners, before the learned Additional Rent Controller ("the learned ARC") seeking eviction of the petitioners from Shop No. 203, Ground Floor, Chawri Bazar, Delhi-110006 ("the tenanted premises", hereinafter), under clause (e) of the proviso to Section 14(1)[1] (hereinafter referred to as "Section 14(1)(e)") of the Delhi Rent Control Act, 1958 ("the DRC

[1] **14. Protection of tenant against eviction**. –
(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:
Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-
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(e) that the premises let for residential purposes are required *bona fide* by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitably residential accommodation;
Explanation.—For the purposes of this clause "premises let for residential purposes" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;

Act"). The respondent pleaded, in the said petition, that she required the tenanted premises for her two sons and three grandsons.

2. On 4th August 2018, the respondent filed an application, before the learned ARC, seeking leave to withdraw E-155/2014, stating that she was "no more interested to continue the petition". Accordingly, *vide* order dated 7th August 2018, E-155/2014 was dismissed as withdrawn.

3. 15 days thereafter, on 20th August 2018, the respondent filed Eviction Petition E-724/18 (from which the present proceedings emanate), praying for eviction of the petitioners from the tenanted premises, claiming that that the tenanted premises were required by her daughters-in-law to run a boutique.

4. Given the location of the tenanted premises, in the busy Chandni Chowk area, the respondent contended, in the eviction petition, that the tenanted premises constituted the most suitable accommodation from where her daughters-in-law could profitably operate the boutique.

5. Leave to defend the eviction petition, was granted to the petitioners by the learned Additional Rent Controller ("the learned ARC"), *vide* order dated 13th May 2019.

6. Having reproduced the rival contentions of the parties before him, the learned ARC entered his observations, on the application for leave to defend, thus:

"No documentary proof that the said property bearing no. 1198 is residential has been placed on record by the petitioner, even though, the petitioner has stated to be residing on the said address. However, there is no denying that there are shops on the lower ground floor. Perusal of the site plan relied upon by the petitioner herself shows that there is a basement, ground, first and second floor. At one place, the petitioner is alleging the said property is to be residential and later on has alleged that there are shops on the ground floor which are let out to two tenants. However, even as per the MCD survey report there are three shops mentioned and the petitioner has also admitted that there are three shutters hence, testimony of the petitioner need to be examined by way of evidence to find out whether there are two shops or three shops at the lower ground floor in the property bearing no. 1198, Gali Babu Ram, Kucha Pati Ram which can used by for the alleged bonafide requirement of the petitioner. Further triable issue is raised whether the daughters in law are dependent on their husbands who are stated to be owners of their 1/3rd shares after the death of Late Shri Rameshwar Prasad or they are dependent upon the deceased petitioner for their bonafide requirement.

Thus, in view of the triable issues raised, the leave to defend application filed by respondent is allowed. Respondent is granted leave to contest the present eviction petition.

Put up for filing of WS by the respondent for 03.06.2019."

7. Consequent to grant of leave to defend the eviction petition, the petitioners filed a written statement by way of response thereto. It is not necessary, for the purpose of the present petition, to recapitulate, in detail the averments in the written statement. Given the limited nature of the controversy herein, suffice it to state that, in paras 4 to 6 of the written statement, the petitioners averred thus:

"4. That admittedly the late petitioner had earlier also filed an eviction petition being E-155/2014 New *No.*77604/16 under section 14(1) (e) read with section 25-8 of the Delhi

Rent Control Act, 1958 against the answering respondents with regard to the subject shop on the same cause of action i.e. bona fide requirement (Hereinafter referred to as the "Pahli Petition"). The late petitioner purposefully avoided to annex Grounds of pahli petition. The Certified copy of the pahli petition with application for leave to defend has already been filed as Annexure-R-5(Colly). The pahli petition was filed by the late petitioner for the alleged bona fide requirement of her Two sons namely Sh. Rajender Prashad Aggarwal and Sh. Kailash Chand Aggarwal and three grandsons namely Sh. Amit Aggerwal, Mr. Manish Aggerwal both sons of Sh. Rajender Prashad & Himanshu Aggerwal @ Chinku S/o. Sh. Kailash Chand Aggerwal. But, in the pahli petition the late petitioner conspicuously did not even whisper about/named the two daughters in law as named in the present petition.

5. That by not mentioning about the alleged need of the two daughters in law in the pahli petition and then withdrawing the same without seeking the leave of the court, the late petitioner cannot now file present petition for their alleged bonafide need. In law the late petitioner cannot split the alleged bonafide need for each and every member of her family. And file petition in the name of one or a group of family member/s and if does not succeed to get the subject shop evicted then, file another eviction petit ion against the answering respondents in the name of another members of her family on the ground of alleged bonafide need thereby, defeating the very object of Order II Rule 2 CPC. Therefore, the present petition is hit by provisions of Order 2 Rule 2 CPC which are reproduced as under:

> ORDER II- FRAME OF SUIT
>
> "2. Suit to include the whole claim (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court."

6. That the late petitioner concealed that the answering respondents who were respondents in the pahli petit ion had moved two applications dated 12 .10.2015 and 20.03.2017 for

bringing on record L1e subsequent events besides issuing a notice under Order XII Rule 8 CPC dated 06.05.2016 to the late petitioner asking her to produce and show to the Hon'ble Court duly updated Passbooks of all the bank accounts maintained by her. However, the late petitioner continued dragging her feet for about three years but, even neither filed the reply to either of the applications nor produced the statement of accounts as asked in the notice. It is submitted that either the late petitioner was scared of being exposed therefore, continued avoiding arguing on these two applications on different pretexts. Or in view of the ongoing negotiations with answering respondents and other tenants in the Entire premises and finally withdrew the petition itself. It is pertinent to mention that the late petitioner knew that the facts mentioned in the applications if brought on record would demolish her flimsy plea of alleged bonafide requirement and the statement of account would substantiate the defence of the answering respondents. The fact of the matter is that the alleged grounds of bonafide need were demolished in the pahli petition competing the late petitioner to withdraw the san1e, but abusing the process of law within two weeks the late petitioner filed the present petition on frivolous ground of need for daughters in law."

8. Trial commenced.

9. During the course of cross examination of Manish Aggarwal, the grandson of Dayawati (who had expired), who testified as PW-1, on 7th June 2022, the learned ARC disallowed certain questions. The recording of evidence, on the said date, read thus:

"07.06.2022
CIS No. E-724/18
CNR No. DLCT03-005659-2018
Dayawati Vs. Ravinder Suri

PWI: Statement of Mr. Manish Aggarwal s/o Mr. Rajinder Prasad Agganval (Recalled for further cross-examination in continuation of 04.10.2019)

On S.A.

XXXXX by Mr. Nilesh Sawhney, Counsel for the respondent.

At this stage, the witness has been shown the document, i.e., certified copy of petition titled as 'Dayawati Vs. Ravinder Suri & Ors,' bearing No. E-155/2014 and asked the following question:-

Q. Is it the same petition which your grandmother had filed against the respondent herein?

Ans. Yes.
The same is now Ex. PW1/R3.

At this stage, the witness has been shown the document, i.e., certified copy of dated 04.08.2018 U/s 151 CPC for withdrawal of the petitioner filed in case titled as 'Dayawati Vs. Ravinder Suri & Ors,' bearing No. E-155/2014 and asked the following question :-

Q. Is it the same application which your grandmother had filed in case titled as 'Dayawati Vs. Ravinder Suri & Ors,' bearing No. E-155/2014 ?

Ans. Yes.

The same document is now Ex. PWlIR4.

Q. Whether the need in the earlier petition which your grandmother had withdrawn was satisfied or she was no more interested in continuing the said petition?

Question dis-allowed being irrelevant.

Sugg. I suggest to you that during the earlier petition you had been negotiating with the respondent herein and Mr. Ashwini Suri, who is the occupant of shop no. 201 in the same building as is evident from CD recording, i.e., Annexure R-1 filed with the leave to defend application, with regard to the shop in question and other shops for selling the shops or raising the rent?

Ans. It is wrong to suggest.

Q. Is it correct that since the name of the daughters-in-law of the deceased petitioner were not mentioned in the first petition, therefore, there was no bonafide need of daughters-in-law between the period January, 2014 when the first petition was filed till 07.08.2018 when the same was withdrawn?

Question dis-allowed being irrelevant. Counsel for the respondent has been cautioned not to ask the irrelevant question resulting in wastage of precious time of the Court.

Q. Is it correct that during the first petition the deceased petitioner increased the rent of Rajeev Saxena, tenant of shop no. 202 of same building from Rs. 325/- to Rs.3,500/- ?

Question dis-allowed being irrelevant. A cost of Rs. 2,000/- is imposed upon the respondent for wasting the time of the Court. Cost be paid to the petitioner by the NDOH.

Q. Is it correct that no eviction petition has been filed against Mr. Rajeev Saxena as he has agreed to increase the rent?

Question dis-allowed being irrelevant. A cost of Rs. 2,000/- is imposed upon the respondent for wasting the time of the Court. Cost be paid to the petitioner by the NDOH."

10. Aggrieved by the said disallowance of questions which the petitioners desired to pose to PW-1, the present petition, invoking Article 227 of the Constitution of India, has been filed by the respondent in the Eviction Petition.

Rival Contentions

11. Mr. Sanjeev Mahajan, learned Counsel for the petitioners,

submits that there is no reason, whatsoever, forthcoming in the record of cross examination dated 7th June 2022, to justify the decision of the learned ARC to disallow certain questions which the petitioners desired to put to PW-1. He submits that it was not sufficient for the learned ARC to merely state that the questions were "irrelevant".

12. Even on facts, submits Mr. Mahajan, the questions could not be regarded as irrelevant, given the averments contained in paras 4 to 6 of the written statement filed by the petitioners in response to the eviction petition instituted by the respondent.

13. The disallowance of the aforesaid questions, he submits, has seriously prejudiced the defence that his clients were desiring to put up, in response to the eviction petition of the respondent. Mr. Mahajan submits that the appropriate course of action would have been for the learned ARC to allow the said questions and, thereafter, to examine their relevance or otherwise during arguments. The questions, he submits, were not such as deserved outright disallowance.

14. Mr. Mahajan also submits that, in the event of the learned ARC feeling that irrelevant questions were posed, at the very least, the law required the learned ARC to question the petitioners in that regard and allow the petitioners an opportunity to establish that the questions were relevant. Wholesome disallowance of questions, in the manner in which the learned ARC has done, he submits, is completely unsustainable in law.

15. Mr. Ajay Gupta, learned Counsel for the respondent, answering the submissions of Mr. Mahajan, submits that the questions which the petitioners were addressing to the PW-1 were repetitive, as a result of which the trial proceedings were being inordinately protracted.

16. He also submits that the order dated 13th May 2019, whereby the learned ARC had granted leave to the petitioners to defend the eviction petition identified limited triable issues and that, therefore, questions which were not relevant to the said issues could not be asked. He further submits that, if one were to examine the law applicable to Section 14(1)(e)[1] of the DRC Act, the bonafide requirement of the landlord cannot be called into question by the tenant under any circumstances. He submits that it is the exclusive prerogative of the landlord to take a call as to the premises which were most suitable for her or his occupation. As such, the mere fact that the earlier eviction petition E-155/2014, with reference to the same property, may have been withdrawn by the respondent shortly prior to filing of the eviction petition E-724/2018 from which the present proceedings emanate, he submits, cannot be a ground for the petitioners to contest the present eviction petition. That being so, the questions which were disallowed, pertaining, as they did, entirely to the earlier eviction petition E-155/2014, were rightly disallowed by the learned ARC, as they were irrelevant to the case and the merits of the stand taken by either party.

17. Mr. Gupta has also relied on the judgments of a learned Single Judge of this Court in ***Kanwal Nain Singh Mokha v. Rekha***

Khurana[2] and ***R.K.Chandolia v. CBI***[3]. He has specifically emphasised para 14 from the decision in ***Kanwal Nain Singh Mokha***[2] and paras 13 to 16, 22 and 23 from ***R.K.Chandolia***[3].

Analysis

18. The protocol regarding examination of witnesses is contained in Chapter X of the Indian Evidence Act 1872 ("the Evidence Act"), comprising Sections 135 to 166.

19. The power of the Court to disallow questions as irrelevant stems from Sections 136 and 138 of the Evidence Act. Section 136 reads thus:

> "**136. Judge to decide as to admissibility of evidence. –** When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise. If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking. If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact."

Admission of evidence would encapsulate, in its fold, admission of oral as well as documentary evidence. Questions which are irrelevant,

[2] **2022 SCC OnLine Del 2308**
[3] **(2012) IV AD (Delhi) 319**

therefore, may be eschewed from admission in exercise of the power vested in the Court by Section 136 of the Evidence Act.

20. Section 138 envisages that re-examination would follow cross examination which, in turn, would follow examination-in-chief, *and further stipulates that examination and cross examination must relate to relevant facts*, though the cross examination need not be confined to the facts to which the witness testifies in his examination-in-chief. Section 142 does not permit leading questions to be asked either in examination in chief or in re-examination, if objected to by the adverse party. Section 143, however, permits leading questions to be asked in cross examination.

21. Section 148 empowers the court to decide when a question shall be asked and when a witness would be compelled to answer. It reads as under:

> "**148. Court to decide when question shall be asked and when witness compelled to answer**. – If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:-
>
> (1) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies;
>
> (2) Such questions are improper if the imputation which they convey relates to matters so remote in time,

> or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies;
>
> (3) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;
>
> (4) The Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable."

Section 148, therefore, empowers the court to decide whether a witness should be compelled to answer a question which relates to a matter not relevant to the suit or proceeding. The considerations which are required to guide the courts in exercise of discretion in that regard are also enumerated in Clauses (1) to (3) in Section 148.

22. Section 151 empowers the court, at its discretion, to forbid questions or inquiries which it regards as indecent or scandalous, while Section 152 requires the court mandatorily to forbid any question which is intended to insult or annoy or which is needlessly offensive.

23. The circumstances in which the court could disallow asking of certain questions to the witness are, thus, statutorily set out in Chapter X of the Evidence Act.

24. The entire jurisdictional scheme in the matter of recording of evidence is, in my respectful opinion, classically digested in the following passages from ***R.K.Chandolia***[3] which are so lucid as to be

practically of textbook significance:

> "14. Under the scheme of Evidence Act, Chapter X deals with the examination of the witnesses. Different kinds of responsibility are cast on the judge in different provisions of this Chapter while recording evidence. Then the Courts also have extensive powers for protecting the witnesses from the questions not lawful in cross examination as set out in Sections 146 to 153, Evidence Act. *Under Section 136, the Judge has not only to satisfy that the evidence that was to be led was relevant but, in what manner if proved, would be relevant. It was only if he was satisfied that the evidence, if proved, would be relevant, that he could admit the same. If it is his duty to admit all the relevant evidence, it is no less his duty to exclude all irrelevant evidence.* Section 5 of the Act also declares that "evidence may be given in any suit or proceedings of the existence or non-existence of every facts in issue and of such other facts as hereinafter will be declared to be relevant, and of no others. *From this, it comes out to be that the Judge is empowered to allow only such evidence to be given as is, in his opinion, relevant and admissible and in order to ascertain the relevancy of the evidence which a party proposes to give, he may ask the party, in what manner, if evidence proved, would be relevant and, he may then decide as to its admissibility. In fact, the question of relevancy is of great nicety and sometimes, great difficulty is felt by the Trial Judge in deciding question of relevancy. Therefore, it is desired that in doubtful cases, he should admit rather than excluding the evidence.*
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> 15. Section 137 gives a statutory right to the adverse party to cross-examine a witness. Section 138 only lays down the three processes of examination to which a witness may be subjected. It does not deal with the admissibility of the evidence. *It also provides that the examination and cross-examination must relate to relevant facts,* but the cross-examination need not be confined to the facts to which the witness testified in his examination-in-chief. *Under this Section, the cross-examination can go beyond the facts narrated in examination-in-chief, but all such questions must relate to relevant facts. It is not that under the right of cross examination, the party will have the right to ask reckless, irrelevant, random and fishing questions to oppress the witness. The "relevant facts" in cross examination of course*

have a wider meaning than the term when applied to examination-in-chief. For instance, facts though otherwise irrelevant may involve questions affecting the credit of a witness, and such questions are permissible in the cross examination as per Section 146 and 153 but, questions manifestly irrelevant or not intended to contradict or qualify the statements in examination-in-chief, or, which do not impeach the credit of a witness, cannot be allowed in cross examination. It is well-established rule of evidence that a party should put to each of a witness so much of a case as concerns that particular witness.

16. It is experienced that sometimes, cross examination goes rambling way and assumes unnecessary length and is directed to harass, humiliate or oppress the witnesses. It is also experienced that the Courts often either due to timidity or the desire not to become unpopular or at times, not knowing its responsibilities and powers, allow the reckless, scandalous and irrelevant cross examinations of witnesses. In fact, in such situations, the court has the power to control the cross examination. The court has a duty to ensure that the cross examination is not made a means of harassment or causing humiliation to the witness. While allowing latitude in the cross examination, court has to see that the questions are directed towards the facts which are deposed in chief, the credibility of the witness, and the facts to which the witness was not to depose, but, to which the cross examiner thinks, is able to depose. It is also well-established that *a witness cannot be contradicted on matters not relevant to the issue. He cannot be interrogated in the irrelevant matters merely for the purpose of contradicting him by other evidence. If it appears to the Judge that the question is vexatious and not relevant to any matter, he must disallow such a question. Even for the purpose of impeaching his credit by contradicting him, the witness cannot be put to an irrelevant question in the cross examination. However, if the question is relevant to the issue, the witness is bound to answer the same and cannot take an excuse of such a question to be criminating.* That being so, it can be said that a witness is always not compellable to answer all the questions in cross examination. *The court has ample power to disallow such questions, which are not relevant to the issue or the witness had no opportunity to know and on which, he is not competent to speak.* This is in consonance with the well-

established norm that a witness must be put that much of a case as concerns that particular witness.

17. A protracted and irrelevant cross examination not only adds to the litigation, but wastes public time and creates disrespect of public in the system. *The court is not to act a silent spectator when evidence is being recorded. Rather, it has the full power to prevent continuing irrelevancies and repetitions in cross examination and to prevent any abuse of the right of cross examination in any manner, appropriate to the circumstances of the case.* The court could have such a power to control the cross examination apart from the Evidence Act as also the Code of Criminal Procedure. Section 146 though relaxes the ambit of cross examination and permits the putting of questions relating to the trustworthiness of the witness, but such questions also must be relevant for the purpose of impeaching the credit, though not to the issue. Under the garb of shaking credit, irrelevant or vexatious questions cannot be allowed, if they do not really impeach the credit of witness or do not challenge the evidence given in examination-in-chief relating the matter under enquiry. *It is established proposition of law that if the question is directly relevant i.e. if it relates to the matters, which are points in issue, the witness is not protected to answer even it amounts to criminating him* but, *if it is relevant only tending to impeach the witness's credit, the discretion lies with the Judge to decide whether witness shall be compelled to answer it or not.* Generally, he will not be allowed to be contradicted except in the cases under Section 153. In fact, Section 132, 146, 147 and 148 embrace whole range of questions, which can properly be addressed to witness and these should be read together.

18. *Thus, it can be said that the relevancy of evidence is of a twofold character; it may be directly relevant in the bearing on, elucidating, or disproving, the very merits of the points in issue. Secondly, it can be relevant in so far as it affects the credit of a witness.* As regard the relevancy relating to a credit of a witness, the court has to decide the same under Section 148 whether the witness is to be compelled to answer or not or to be warned that he is not obliged to answer. The Judge has the option in such a case either to compel or excuse. The provisions of Section 148-153 are restricted to questions relating to facts which are relevant only in so far as they

affect the credit of the witness by injuring his character; whereas some of the additional questions enumerated in Section 146 do not necessarily suggest any imputation on the witness's character. When we talk of the relevancy of the questions relating to character, unnecessarily provocative or merely harassing questions will not be entertained in this class of questions.

19. As per Section 151 and 152, the questions which are apparently indecent or scandalous or which appear to be intended to insult or annoy or are offensive in form, are forbidden. Such questions may be put either to shake the credit of witness or as relating to the facts in issue. If they are put merely to shake the credit of the witness, the court has complete dominion over them and to forbid them even though they may have some bearing on the questions before the court. But, *if they relate to the facts in issue or are necessary to determine the facts in issue existed, the court has no jurisdiction to forbid them*. The court cannot forbid indecent or scandalous questions, if they relate to the facts in issue. It is because what is relevant cannot be scandalous.

20. Having seen that though the ambit of cross examination of a witness goes beyond his examination-in-chief, but there has to be relevancy of the questions as regard to the facts or to the creditworthiness of a witness. The counsels must exercise their right of cross examination in a reasonable manner. They have their obligations no less than their privileges. They have no right of unlimited arguments or examination of witnesses, but only so much as would be relevant and reasonably necessary in the particular matter. When a Judge exercises his discretion and disallows a question being irrelevant on any count, the cross examiner should accept the court's rulings without any demur or display of temper. The court is entitled to expect such like acceptance of a ruling on the part of the counsel."

25. The power of the Court to disallow questions which are irrelevant, therefore, cannot be gainsaid. At the same time, as the above passages note, the question of "relevancy" is, more often than not, problematic, especially at the stage when evidence is being

recorded, and the appropriate course of action would, therefore, be to allow, rather than disallow, the questions, except where they are "manifestly irrelevant". *Questions which relate to facts in issue are, on the other hand, manifestly, relevant.* To borrow from ***R.K.Chandolia***[3], questions which "*may be directly relevant in the bearing on, elucidating, or disproving, the very merits of the points in issue*" are *ex facie* relevant.

26. I express my respectful and complete agreement with the elucidation of the law in ***R.K.Chandolia***[3].

27. In determining what "points" are "in issue", so as to decide whether to allow or disallow questions posed with respect thereto, the Court must be guided by the concept of "issues" as statutorily evisaged in Order XIV Rule 1(1) of the CPC. Whenever a "material proposition of fact or law is affirmed by one party and denied by the other", an "issue" arises. On all such facts, therefore, the parties are in issue. Contentions of fact raised by either side, to which the other side does not assent, therefore, are facts on which the parties are "at issue". Questions, which seek to obtain evidence to establish or prove such facts are, therefore, "relevant" and, therefore, are required to be allowed.

28. Whether the fact, even if proved, would be of any assistance, whatsoever, in aiding the party asserting the fact to prove the case that he seeks to set up is a completely immaterial consideration at that point in the trial. A litigant is entitled to plead, to further his case, all facts and grounds as he deems appropriate. Concomitantly, he is also

entitled to lead all such evidence, oral and documentary, as he can, to prove the said facts so as to establish the stand that he seeks to espouse. Questions geared to that end cannot be disallowed. Else, it would amount to the Court obstructing the litigant from proving his case, which is, needless to say, unthinkable in law.

29. Over two decades ago, a Bench of three Hon'ble Judges of the Supreme Court, in ***Bipin Shantilal Panchal v. State of Gujarat***[4] was seized with the question of the appropriate procedure to be followed when, during recording of evidence, objections were raised either to exhibiting of documents or to items of oral evidence. The Supreme Court noted that if, every time an objection was raised, a detailed examination of the objection and decision thereon were to be taken – which would inevitably also provoke challenges to higher appellate or revisional fora – trials would be irretrievably prolonged. At the same time, if the learned Trial Courts were to be directed to note the objections and leave them for decision at the final stage, then, if an appellate or higher forum were to find the decision of the learned Trial Court on the objection to be unacceptable, the matter would be required to be remanded, setting the clock back considerably. The following *via media* was, therefore, devised by the Supreme Court, which was directed to be binding in effect:

> "**14.** When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence *the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be*

[4] **(2001) 3 SCC 1**

decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)

15. The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence-taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is recanvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.

16. *We, therefore, make the above as a procedure to be followed by the trial courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence*."

(Emphasis supplied)

30. The procedure that the learned ADJ has followed in the present instance is clearly contrary to the procedure enunciated in the above passages from ***Bipin Shantilal Panchal***[4]. No reason has been recorded, by the learned ADJ, for regarding the questions posed by the petitioner as irrelevant. The questions have been jettisoned, wholesale, from the evidence, without allowing PW-1 to respond. This is clearly not permissible.

31. Once the Supreme Court held the procedure to be binding (as para 16 of the report in ***Bipin Shantilal Panchal***[4] does), it is incumbent on all Trial Courts to follow it. Nor, in my considered opinion, can the procedure be restricted to trials in criminal cases, as the objective of expeditious trial, and substantial justice, equally pervade and guide civil and criminal trials.

32. All Trial Courts have, therefore, in recording evidence, and, particularly, in deciding whether to disallow any question as irrelevant, follow the principles enunciated in ***R.K.Chandolia***[3] and the procedure prescribed in ***Bipin Shantilal Panchal***[4]. This, in my view, is non-negotiable.

33. Having said that, the present proceedings are under Article 227 of the Constitution of India. This Court exercises, under Article 227, supervisory jurisdiction. The court is required, therefore, to examine whether, while exercising its jurisdiction, the hierarchically lower forum has exercised jurisdiction in a manner which calls for supervisory interference.

34. In the present case, there is no indication, in the records of the proceedings before the learned ARC on 7th June 2022 as to why the learned ARC regarded the four questions which the petitioners desired to pose to PW-1, and which the learned ARC disallowed, as irrelevant.

35. While it is open to a court, as Mr. Gupta contends and as has been held in ***R.K.Chandolia***[3], not to allow asking of questions, to a

witness, which are irrelevant, the reason for the court regarding the questions as irrelevant must be forthcoming from the record of proceedings. It cannot be left to the realm of guesswork. Else, questions could be arbitrarily allowed or disallowed, which could create chaos in the matter of recording of evidence and could also seriously prejudice the party in proving the case that he seeks to establish. In the present case, the record of proceedings dated 7th June 2022 does not indicate why, according to the learned ARC, the questions which he chose to disallow were irrelevant.

36. Relevance or irrelevance, it merits reiteration, are to be decided on the basis of the controversy before the court, and the points on which the parties join issue. All aspects on which the parties join issue are part of the controversy before the court. The merits of the rival stands cannot be a material consideration while examining whether a particular question that the party desires to pose to a witness is relevant or irrelevant. Relevance or irrelevance is to be decided by juxtaposing the question that is being sought to be put with the pleadings of the parties and their rival stands before the court, and not with respect to the merits of such stands.

37. As such, the arguments of Mr. Gupta, regarding the ingredients which are required to be satisfied for a case of *bonafide* requirement under Section 14(1) (e) of the DRC Act, the considerations are really immaterial insofar as the aspect of relevance of the questions which the petitioners desired to pose to PW-1 are concerned. What has to be seen is whether the questions were relevant, viewed *vis a vis* the stand that the petitioners were adopting in their defence to the eviction

petition. If the petitioners had taken a particular stand and, in order to prove that stand, the questions were relevant, they have to be treated as relevant. The merits of the stand cannot be a valid consideration at that point of time.

38. When the questions which were disallowed by the learned ARC are seen in the backdrop of paras 4 to 6 of the written statement filed by the petitioners, by way of response to the respondent's eviction petition, it is clear that the questions cannot be regarded as irrelevant. They pertained to the circumstances in which the earlier eviction petition E 155/2014 was withdrawn by the respondent. As to whether that withdrawal and the circumstances in which the said withdrawal took place, would aid the defence that the petitioners seek to put up to the respondent's eviction petition, has to be decided by the learned ARC during the course of trial and arguments. They may aid the petitioner; equally, they may not. They are, however, relevant *to the stand that the petitioners chose to put up* and, therefore, the questions were required to be allowed, not disallowed.

39. Equally, the reliance, by Mr. Gupta, on the order dated 13th May 2019, of the learned ARC, granting leave to the petitioners to defend the eviction petition, cannot be of any substantial assistance to him.

40. Section 25B(5) of the DRC Act does not empower the Rent Controller to restrict the grant of leave, to the tenant, to contest the eviction petition in any fashion. The provision reads thus:

> "(5) The Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses

> such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14, or under Section 14-A."

Ex facie, Section 25(B) does not empower the Rent Controller from limiting or restricting the grounds on which the tenant, granted leave to contest the eviction petition under Section 14(1)(e), may do so. This Court has, however, held that, in order to expedite eviction proceedings, leave may be restricted to certain points in more than one decision. In ***Vraj Lal Mani Lal & Co. v Satish Swarup Gupta***[5], Rajinder Sachar, J. (as he then was) held thus:

> "I do not find any difficulty in granting leave to contest restricted to one point. Sub-section (4) of Section 25B of the Act provides that the tenant shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller. I can see no hardship or anomaly in this course because if the court feels that out of the objections raised by the tenant only one or two require examination, *and as the others are worthless, it cannot be contemplated that leave must be granted on all these points which are not defensible.* This course would unnecessarily prolong the proceedings and would be counter to the object of the provisions which is to expedite the disposal of these matters."
>
> (Emphasis supplied)

This decision was followed in ***Chatar Sain Goel v. Puran Singh***[6] which held thus, in more or less the same words (in para 5 of the report as in SCC OnLine):

> "Section 25B provides special procedure for the disposal of applications under Section 14(1)(e). It is apparent that the purpose of introducing the provisions contained in Section 25

[5] (1978) 1 RCR 231
[6] 1981 SCC OnLine Del 78

> was to provide for speedy trial of such applications. Keeping in view this legislative intent, we find no difficulty in holding that leave could be restricted to one or more points if other points raised, by the tenant were found to be without substance. It would avoid unnecessary delay in the disposal of these applications which was the intent of the legislature in incorporating these provisions."

The same view was echoed, more recently, by another learned Single Judge of this Court in ***Tagore Education Society Regd. v. Kamla Tandon***[7].

41. I may note, here, that, in ***Tagore Education Society***[7], reliance had been placed on two earlier decisions of learned Single Judges of this Court in ***S.K. Dey v. D.G. Gagrena***[8] and ***Bhauri Devi v. Mahender Kumar***[9], rendered after ***Vraj Lal Mani Lal***[5] and ***Chatar Sain Goel***[6] in which it was categorically held that the Rent Controller could *not* grant restricted leave to contest under Section 25-B(5). The learned Single Judge, in ***Tagore Education Society***[7], proceeded on the premise that ***Chatar Sain Goel***[6] was rendered by a Division Bench and that, therefore, the decisions in ***S.K. Dey***[8] and ***Bhauri Devi***[9] were *per incuriam*. ***Ram Lubhaya Kapoor v. Ram Prakash Mehra***[10], by a learned Single Judge of this Court, also regarded ***Chatar Sain Goel***[6] as having been rendered by a learned Single Judge of this Court. This is a trifle perplexing, as ***Chatar Sain Goel***[6] is, in all journals, reported as a judgement of a learned Single Judge (G.C. Jain, J.) though the Court has, in referring to itself, used the pronoun "we". The website of this Court, unfortunately, does not reflect data dating back to 1981, when

[7] (2009) 111 DRJ 452
[8] AIR 1985 Del 169: 26 (1984) DLT 438
[9] 146 (2008) DLT 117

Chatar Sain Goel[6] was rendered.

42. To know whether, in fact, ***Chatar Sain Goel***[6] was rendered by a learned Single Judge or by a Division Bench, therefore, one may have to ingest the dust of the record rooms of this Court. Thankfully, we need not embark on that exercise, as, even if the learned ARC were to be held to be empowered to grant leave to contest, under Section 25-B(5) of the DRC Act restricted to certain issues, the order, dated 13th May 2019, of the learned ARC granting leave to defend in the present case does not, in fact, restrict leave to defend to the issues noticed, in that order, to be "triable". The mere fact that leave to defend had been granted "in view of the triable issues raised" cannot, in my view, mean that the leave granted to the petitioner to contest the eviction petition was limited to the issues that the learned ARC found to be "triable".

43. Even on the anvil of order dated 13th May 2019 granting leave to the petitioners to contest the eviction petition, therefore, the decision of the learned ARC to disallow the four questions which were posed by the petitioners to PW-1, on 7th June 2022, cannot sustain. As the disallowance of the said questions seriously prejudices the defence that the petitioners sought to be put up in response of the eviction petition of the respondent, a case for interference under Article 227 of the Constitution of India is made out.

44. Accordingly, the decision of the learned ARC to disallow four questions, which the petitioners desired to pose to PW-1 on 7th June

[10] (1982) 21 DLT 119

2022, is quashed and set aside.

45. The respondent is directed to make PW-1 available, so that the said questions could be posed to PW-1 by the petitioners, on a date to be fixed by the learned ARC in that regard.

46. The petition, therefore, stands allowed in the aforesaid terms, with no order as to costs.

C. HARI SHANKAR, J.

SEPTEMBER 1, 2022/*dsn*