Admissibility of Evidence / Documents – Dealing with Mid-trial Objections

S. Mohamed Abdahir, M.Com., M.L.,
Additional Director,
Tamil Nadu State Judicial Academy

(1) From its institution to conclusion a suit journeys through several stages. . And for the trial Judge, who drives it all through the journey, the path is full of road-blocks in the form of Interlocutory Applications (IAs), death of parties and so on. Once it reaches the stage of trial, completing the process of evidence recording smoothly and quickly is more daunting than disposing of it finally by rendering judgment. In this write-up, I deal with one of the mid-trial crises a judge has to manage during trial. That's objection to admissibility and relevancy of evidence/documents. This I do in the context of the Supreme Court's two important rulings.

Bipin Shantilal	R.V.E. Venkatachala
/vs/	/vs/
State of Gujarat	Arulmigu Viswesaraswam
(2002)10SCC529 : 2002(1)LW(Crl)115	**(2003)8SCC752 : 2004(1)LW728**
Three-Judge Bench	Two-Judge Bench
Decided on 22.02.2001	Decided on 08.10.2003

(2) Shalimar Chemical Works /vs/ Surendra Oil, (2010)8SCC423 is the Supreme Court's yet another ruling by an another two-judge Bench decided on August 27, 2010. In it, plaintiff filed photocopies of a document which the trial judge marked subject to proof and admissibility. The Supreme Court faulted this procedure holding that he should

have declined to exhibit it as well as shouldn't have left its admissibility open and hanging. For the view, the Court relied on Venkatachala's case. Shalimar Chemicals, thus, espouses Venkatachala's ratio. So I'm confining the analysis to the two rulings cited in the preceding paragraph. And before examining their ratio-worthiness, forming the subject of this article, I summarise their highpoints.

(3) **Highlights / Bipin's Case (Para 13 To 16)**

- When an objection is raised, in the course of recording evidence in a trial, to a document's admissibility, the court can make a note of the objection and exhibit the objected document tentatively.

- If the objection relates to any piece of oral evidence, the court can similarly record the objected part of the evidence with a note of it.

- The note must stipulate that the objection shall be decided at the last stage/final judgment. If it's sustained, the court can exclude such evidence from consideration. No illegality in adopting such a course.

- The procedure suggested has twin advantages. Firstly, the trial court's time is saved at the evidence stage. And, it can continue examination of witnesses obviating the need for their waiting for long hours.

- Secondly, when the same objection is re-argued in Appeal/Revision against the trial court's judgment, the superior court can decide the correctness of the trial court's view with ease. For, the objected document/evidence is on record.

- The Supreme Court makes the above points as a procedure for trial courts to follow whenever the situation arises. However, If the objection is to stamp duty deficiency of a document, the court has to decide it before proceeding further.

(4) **Highlights / Venkatachala's Case (Para 20)**

- Objection to admissibility of evidence should ordinarily be made, when it's tendered, not subsequently. A document inadmissible in evidence, though brought on record, must be excluded from consideration.

- Objection to a document's admissibility may be classified into two classes. One, the document itself is inadmissible in evidence. Two, the mode of proof is irregular.

- Just because a document has been exhibited, objection to its admissibility is not excluded; and it can be raised even in Appeal/Revision. No dispute over this proposition of law laid down in The Roman Catholic Mission /vs/ The State (1966) 3 SCR 283.

- When the objection pertains to the mode of proof, it should be raised before the evidence is tendered. Once the document is exhibited, objection to its mode of proof can't be raised at subsequent stage. It's a rule of fair play.

- The omission to make such objection is fatal because by his failure the party entitled to object allows the opposite party to presume that he's not serious about the mode of proof.

- A prompt objection enables the court to apply its mind and pronounce its decision on admissibility then and there.

- If the objection to mode of proof is raised immediately, the opposite party may mark the document through correct mode with the court's permission. This practice is fair to both parties.

(5) From the highlights the cleavage between the two rulings is patent. Put simply, Bipin's case articulates marking the documents tentatively and deciding their admissibility at the final stage; but Venkatachala's case instructs to decide the objection then and there. Although the problem is procedural, it's of extreme importance; for, the trial

judge has to manage this mid-trial crisis effectively, if at all he's to bring the trial process to an end as quickly as possible. I attempt to shed some light on which of the two rulings command precedential value – Bipin's case or Venkatachala's case? My answer is: Bipin is binding precedent, not Venkatachala or Shalimar Chemicals. Here are reasons with which I back up my answer,

- Bipin is a three- Judge Bench decision while Venkatachala a two- Judge Bench ruling. Besides, the former is anterior in point of time to the later.

- Bipin's case is better reasoned than Venkatachala's case. Learned Judges in Bipin's case highlight advantages of deciding objections to admissibility at a later stage. In fact, the procedure suggested by them ensures against delay in completing trial, scuttling the scope for appeals on Interlocutory orders when trial progresses.

- In both Venkatachala and Shalimar, the Hon'ble Judges had no opportunity to consider Bipin's case, as it was not cited before them. So they couldn't factor Bipin's line of reasoning into their thought process.

- Order 13 Rule 3 CPC enables the court to reject any irrelevant or inadmissible document at any stage of the suit recording the grounds for the rejection. The phrase "at any stage of the suit" is a clear indication that the court need not reject inadmissible documents at the threshold. Bipin's case is, thus, in keeping with this rule.

- Section 136 of the Indian Evidence Act, 1872 empowers the judge to question relevancy of evidence. U/s 165 the Judge may ask any question at any time about any fact relevant or irrelevant. Which is meant to discover or to obtain proper proof of relevant facts. These provisions don't prescribe that objections to admissibility should be decided immediately.

(6) True, Bipin's case was about a delayed trial under the Narcotic Drugs Psychotropic Subsistence (NDPS) Act, 1985. That's in the context of a criminal case. Can it be applied to trials under civil law? Answer to this question is available in para (28) of Venkatachala's case itself, although it couldn't take note of Bipin's case. I supply below a summary therefrom:

- Whether a civil case or criminal case, the anvil for testing the terms "proved", "disproved", and "not proved" as defined in section 3 of the Evidence Act is one and the same.

- Assessing the result of the evidence derived by applying the rule makes the difference. That's the probative effect of evidence in civil and criminal cases are not always the same.

- To be specific, pre-ponderance of probability is the proof norm in civil cases while proof beyond reasonable doubt the standard in criminal cases. Except for this, no difference in the matter of exhibiting documents.

(7) Notably, nothing could be gathered from Bipin's case phraseology that the learned judges intended to confine its ratio only to criminal trials. Their observations give unmistakable idea that they meant trials generally, making no distinction between trial of civil cases and criminal cases. In Venkatachala's case, the Supreme Court referred to the Roman Catholic Mission case[1], which was a Constitutional Bench decision. In it, the Supreme Court did not prescribe any procedure about the time and manner of handling objections to admissibility of evidence. The highpoint of that ruling was that although an inadmissible document is exhibited, objection thereto is not excluded and it can be raised even in appeal. So, for its reliance on the Roman Catholic Mission case, Venkatachala's case can't be understood to have a dominating effect over what Bipin's case lays down.

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[1] ***(1966) 3 SCR 283 = AIR 1966 SC 1457, para(8)***

(8) Bipin and Venkatachala are cases on admissibility of evidence. What about relevancy?. Admissibility and relevancy are not one and the same. The court has to determine relevancy of a particular fact keeping in view the fact-in-issue. To become a relevant fact, the particular fact must be connected with the fact-in-issue in any of the ways referred to in the provisions of the Indian Evidence Act, 1872 relating to the relevancy of facts. It's so as per Section 3 of the Act. Admissibility pre-supposes relevancy. A fact may logically as well as legally be relevant to the fact-in-issue. Yet, it may be inadmissible. Example: Confession made to a police officer. This may be relevant to the point-in-issue but Section 25 of the Act bars its admissibility. So admissibility is a question of law while relevancy a mixed question of fact and law. Whenever admissibility or relevancy is not contested, no problem for the trial judge. When either of the two is objected to, the ideal procedure for him, in my considered opinion, is the one that Bipin's case sets out. No matter, whether civil trial or criminal trial.

(9) As I've noted, the subject is in the realm of procedural law. For that reason one can't be dismissive of it. The trial judge, in particular, is expected to have a good amount of knowledge of procedural law, because it enables him to steer the case clear of all impediments as it moves from stage to stage. Besides, this will cut down delay and save human effort at every stage. Certainly, a sure way to speedy disposal as well as towards making the adjudicating process user lovely.

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