

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL**

ON THE 17th OF APRIL, 2025

MISC. PETITION No. 7133 of 2024

SMT. RANJANA BERRY

Versus

SMT. BHUPINDER KAUR AND OTHERS

Appearance:

Shri Avinash Zargar - Advocate for the petitioner.

Shri Kunal Thakre - Advocate for the respondents.

ORDER

This misc. petition has been preferred by the petitioner/defendant challenging the order dated 22.11.2024 passed by 16th Civil Judge Junior Division, Bhopal, in RCSA no.800900/2012 whereby application under Section 151 CPC dated 02.09.2024 filed on behalf of the defendant, has been dismissed.

2. Facts in short are that challenging the veracity of Court proceedings and of defendant's deposition recorded on 24.11.2023, an application was filed on behalf of the defendant under illegible signature of a counsel, whose name according to order sheet of the Court, is Mr. Sanchay Nema, with the allegations that the deposition sheets dated 24.11.2023 are in fact different from the deposition sheets of the Court, because even prima facie the signatures done by the defendant on the deposition sheets dated 16.08.2023 do not match with the signatures done on the deposition sheets dated 24.11.2023. With a view to bolster the allegations made in the application, learned counsel submits that paragraphs 38 and 41 of defendant's deposition show that one and the same exhibit

(Ex.P/45) has been marked twice on two documents and the document filed before this Court at page no.49 which is also marked as Ex.P/45, bears signature of presiding officer Mr. Alok Mishra, who was not posted on 24.11.2023 as 21st Civil Judge Class-I, Bhopal but undisputedly Ms. Tanushree Shivhare was posted as Judge of the said Court. He submits that deposition sheets of 24.11.2023 do not contain signature of Presiding Officer Ms. Tanushree Shivhare. He submits that on first date of hearing itself explanation from concerning judge was called by this Court vide order dated 09.01.2025 and explanation dtd.30.01.2025 submitted by the Judge Ms. Tanushree Shivhare is not acceptable, especially the explanation given vide paragraphs f. and g., which are reproduced as under:-

“f. During cross-examination of defendant's witness, in paragraph no. 38, the counsel on behalf of the plaintiff asked a question with regard to a signature on the copy of receipt (which was already on record of the file but not exhibited, presented by the plaintiff on 02.05.2013 before the then XXI Civil Judge, Shri. Alok Mishra). This document was marked as Exhibit P-45 on 24.11.2023, but since it already had signature of the Presiding officer XXI Civil Judge, Shri Alok Mishra before marking the Exhibit no., it was mistakenly left without signature by me.

g. Later post lunch, during the cross-examination of defendant's witness, in paragraph no. 41, the counsel on behalf of the Plaintiff asked a question with regard to entry dated 18 October on page no. 21 of the passbook of current account of Reckmost Engineering pertaining to receiving an amount of Rs. 35,000/- (this passbook was the other of the two new documents produced by the plaintiff's counsel himself for the purpose of cross-examination on 24.11.2023). Due to an inadvertent error, this document was again marked as Exhibit P-45 and was duly signed by me after marking the exhibit.”

3. Supporting the averments made in application under Section 151 CPC, learned counsel submits that in view of objections taken in the application, the depositions sheets/proceedings dated 24.11.2023 deserve to be excluded from the record and necessary action be taken against the erring persons/officials.

4. Learned counsel appearing for the respondents supports the impugned order and prays for dismissal of the misc. petition with the further submissions that unnecessary and false allegations have been made in the application in respect of the proceedings of the Court even without filing any affidavit of the defendant or her counsel in support of the allegations.

5. Heard learned counsel for the parties and perused the record.

6. Record shows that originally the defendant-Smt. Ranjana Berry (DW-1) on 04.12.2012 submitted her chief examination on affidavit under Order XVIII Rule 4 CPC, thereupon cross-examination was commenced on 16.08.2023, which could not complete on that date, hence the case was adjourned for further cross-examination and on 24.11.2023 further cross-examination was done on defendant from paragraph 27 to 42 and again the case was adjourned for her further cross-examination on 09.01.2024. Record shows that thereafter till now, cross-examination on her has not been completed due to filing of some applications and ultimately after a long lapse of time i.e. on 02.09.2024 said application under Section 151 CPC was filed making certain allegations about tampering with the Court's record. Alleged instances of tampering of record and procedural irregularities have been described in paragraph 4 of the application, which has been dismissed by trial Court by the impugned order.

7. Upon listing of the case before this Court, an interim order was passed on 09.01.2025 seeking explanation of the concerned civil judge, who has given her explanation dated 30.01.2025, available in the file of this Court, which is as under:-

a. The concerned file was received in my court on transfer on 12.05.2023. The matter has been pending since 2012, and hence, was in the category of matters pending from more than 10 years. I diligently pursued to decide the case as soon as possible and therefore, considering the nature and age of the matter, it was listed on short intervals. I conducted the trial in the case on 21.06.2023 (listed post summer vacation), 03.07.2023, 05.07.2023, 10.07.2023, 11.07.2023, 12.07.2023, 13.07.2023, 17.07.2023, 19.07.2023, 04.08.2023, 07.08.2023, 16.08.2023, 25.08.2023, 26.08.2023, 04.09.2023, 05.09.2023, 11.09.2023, 20.09.2023, 04.10.2023, 09.10.2023, 27.10.2023, 07.11.2023, 24.11.2023, 28.11.2023, 16.01.2024, 20.01.2024, 29.01.2024, 22.02.2024 and then before the next date of hearing I was transferred from Bhopal.

b. The petitioners in M.P. No. 7133 of 2024 before the Hon'ble High Court have challenged evidence recorded on 24.11.2023, on the ground that Exhibit P-45 has been marked twice, firstly in paragraph no. 38 where it is mentioned as copy of the receipt and secondly in paragraph 41, where current account passbook has been marked as Exhibit P-45.

c. I submit that upon perusal of the file, I found that on 24.11.2023, the matter was listed for cross-examination of defendant's witness (Smt. Ranjana Berry). On that day, her statement was recorded in two parts, firstly before lunch i.e., from 01:05 p.m. to 02:10

p.m. and secondly after lunch, from 04:45 pm to 5:00 pm. The statement was recorded in two parts on the same day, in the presence of the advocates of both parties.

d. On 24.11.2023, the counsel on behalf of plaintiff had produced two new documents during the cross-examination of defendant's witness. These documents were taken on record (in accordance of Order 7 Rule 14(4) of CPC and Judgment of the Hon'ble Apex Court in Salem Advocate Bar Association, T.N. v. Union of India, AIR 2005 SC 3353). The two new documents were, (i) a declaration deed and (ii) a bank passbook.

e. During the cross-examination of defendant's witness, in paragraph no. 35, the counsel on behalf of the plaintiff asked a question with regard to signature on a document titled - Declaration Deed (which was one of the two new documents produced by the plaintiff's counsel himself for the purpose of cross-examination on 24.11.2023) and the said declaration deed was marked as Exhibit P-44.

f. During cross-examination of defendant's witness, in paragraph no. 38, the counsel on behalf of the plaintiff asked a question with regard to a signature on the copy of receipt (which was already on record of the file but not exhibited, presented by the plaintiff on 02.05.2013 before the then XXI Civil Judge, Shri. Alok Mishra). This document was marked as Exhibit P-45 on 24.11.2023, but since it already had signature of the Presiding officer XXI Civil Judge, Shri Alok Mishra before marking the Exhibit no., it was mistakenly left without signature by me.

g. Later post lunch, during the cross-examination of defendant's witness, in paragraph no. 41, the counsel on behalf of the Plaintiff asked a question with regard to entry dated 18 October on page no. 21 of the passbook of current account of Reckmost Engineering pertaining to receiving an amount of Rs. 35,000/- (this passbook was the other of the two new documents produced by the plaintiff's counsel himself for the purpose of cross-examination on 24.11.2023). Due to an inadvertent error, this document was again marked as Exhibit P-45 and was duly signed by me after marking the exhibit."

8. For the reasons best known to the petitioner, no affidavit has been filed in support of the application under Section 151 CPC, either of the defendant or of the counsel, who allegedly reviewed the record and observed tampering with the Court record for the purpose of providing undue advantage to the plaintiffs. In my considered opinion in absence of any affidavit in support of the allegations made in application in respect of record of the Court and its proceedings, the application itself cannot be entertained and deserves to be thrown out.

9. It is well settled that the judges' record is conclusive. Neither lawyer nor litigant may claim to contradict it, except before the judge himself, but nowhere else, that too without any delay. Please see: Jitendra Alias Kalla vs. State (Government of NCT of Delhi), **(2019) 13 SCC 691**; State of Assam vs. Union of India and others, **(2010) 10 SCC 408**; Ram

Bali vs. State of U.P., (2004) 10 SCC 598; and State of Maharashtra vs. Ramdas Shrinivas Nayak and another, (1982) 2 SCC 463.

10. In the present case last order sheet dtd.29.01.2024 was drawn under the signature of Judge/Ms. Tanushree Shivhare. On 22.02.2024 presiding officer was on leave. Then order sheet dtd.12.04.2024 was drawn under the signature of Judge/Shri Kapil Borasi.

11. After change of presiding officer and without assigning any reason of delay, application under section 151 CPC was filed on 02.09.2024 on behalf of the defendant making several allegations regarding veracity of the Court's record and proceedings, that too without any affidavit.

12. Even otherwise, in the light of interim order dtd.09.01.2025 passed by this Court, explanation submitted by concerning civil judge, Ms. Tanushree Shivhare, appears to be acceptable and this Court does not find any illegality in the impugned order rejecting the application under Section 151 CPC.

13. Resultantly, this misc. petition fails and is hereby **dismissed** with cost of Rs.25,000/- to be deposited with the District Legal Services Authority, Bhopal by the petitioner.

14. Misc. application(s), pending if any, shall stand closed.

(DWARKA DHISH BANSAL)
JUDGE