THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 28th September, 2020

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.12 of 2020

Petitioners : The Karmapa Charitable Trust and Others

versus

Respondents : The State of Sikkim and Others

Petition under Article 227 of the Constitution of India

Appearance

Mr. K. K. Rai and Mr. B. Sharma, Senior Advocates with Mr. Norden Tshering Bhutia, Advocate for the Petitioners.

Mr. Hissey Gyaltsen, Assistant Government Advocate for the State-Respondents No.1 and 2.

Mr. Anmole Prasad and Mr. N. Rai, Senior Advocates with Mr. Jorgay Namka, Mr. Zangpo Sherpa, Ms. Yangchen D. Gyatso and Mr. Sagar Chettri, Advocates for the Respondent No.3.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The learned trial Court, by its Order dated 10.02.2020, in Title Suit No.01 of 2017 *(Karmapa Charitable Trust & Others vs. State of Sikkim & Others),* allowed the petition filed by the Respondent No.3 under Order VIII Rule 1A(3) read with Section 151 of the Code of Civil Procedure, 1908 (for short, "CPC"), thereby permitting the Respondent No.3 to file twelve additional documents at the stage of the said Respondent's evidence, after closure of the evidence of the Plaintiffs and the Respondents No.1 and 2. Aggrieved by this Order, the Petitioners assail it before this Court

under Article 227 of the Constitution of India (for short, "Constitution").

2. Respondents No.1 and 2 had no counter-affidavit to file. The counter-affidavit filed by the Respondent No.3 was met by a rejoinder of the Petitioners.

3.(i) Advancing his arguments for the Petitioner, learned Senior Counsel canvassed the contention that Order VIII Rule 1A of the CPC requires the Respondent to enter all documents that he bases his defense upon in a list, and to produce it in Court along with the written statement. If the documents that the Respondent seeks to rely on are not in his power and possession, he is to divulge as to who it is with at that time. However, the Respondent No.3 opted to disregard this provision of law. The learned Trial Court, for its part, while allowing the Respondent No.3 to file the additional documents belatedly, it is alleged, failed to appreciate that the discretion vested on it under the provisions of Order VIII Rule A1(3) of the CPC cannot be exercised in a routine manner. That, leave is to be granted only on due consideration of the *bona fides* of the party, which is non-existent on the part of the Respondent No.3. Calling the attention of this Court to the provisions of Order XVI Rule 1 of the CPC, learned Senior Counsel contended that the provision mandates that parties furnish in Court a list of witnesses whom they propose to call, either to give evidence or to produce documents. That, although the Respondent No.3 had filed his list of witnesses way back on 21.08.2002, the relevance of the witnesses now sought to be examined or the documents sought to be produced were not brought to the notice of either the learned Trial Court or the parties. It was his specific

argument that by allowing the petition under Order VIII Rule 1A(3) of the CPC, the interest of the Petitioners herein are being jeopardized as it is a belated and *mala fide* step taken by the Respondent No.3, when the evidence of the Petitioners' witnesses and that of the Respondents No.1 and 2 have already concluded. Consequently, it tantamounts to a *de novo* trial where the Petitioners will be deprived of the opportunity of refuting the documents in question, which introduces at this stage an element of surprise in the *lis.* That, in fact, one of the documents now being relied upon by the Respondent No.3 bears the signature of *Shamarpa Rinpoche* who has passed on 11.06.2014, thereby, making it an impossibility for the Petitioners to test the authenticity of his signature which would thereby prejudice their case. The Respondent No.3 through the additional documents is now attempting to legitimize the recognition of the *Karmapa* identified by them and also to resurrect the issue of *Tsurphu Labrang* in an effort to establish that there was a parallel administration being run by the said entity, when the matter has already been closed by an Order of the learned Trial Court and confirmed by a Judgment of this Court.

(ii) Training his arguments against the impugned Order, learned Senior Counsel contended that the learned Trial Court failed to appreciate that it was the Respondent No.3 who was required to defend his case and his witnesses cannot introduce documents or facts which the Respondent No.3 himself is unaware of. That, despite the learned Trial Court having noticed that the Respondent No.3 sought to introduce new documents without the leave of the Court which was duly objected to by the Petitioners,

instead of rejecting the documents, the Court embarked on a mission of advising the Respondent No.3 to file an appropriate application to bring on record the new documents. That, some of the documents sought to be introduced pertain to a period subsequent to the cause of action and are irrelevant while some documents, it is alleged, have been manufactured for the purposes of this *lis* and yet others subsequently procured to assist the case of the Respondent No.3, who, by surreptitiously introducing the documents without following the relevant procedure prescribed by law, seeks to cover up any lacunae which may have existed in their case.

(iii) It was next contended that the learned Trial Court in the impugned Order, has wrongly relied on the ratio of ***Ashok Sharma*** vs. ***Ram Adhar Sharma***[1]***.*** The Respondent therein had sought permission of the Court to summon a witness to prove the date of construction of the society and on the direction of the Court the witness had brought the documents. In the instant case, the witnesses have brought the documents sans such directions. That, the Respondent No.3 apart from acting *mala fide* failed to exercise due diligence at the appropriate stage as provided by law indicating his lackadaisical conduct, hence the impugned Order for all the foregoing reasons deserves to be set aside. To augment his submissions, he relied on the following ratiocination;

(a) ***Ashok Sharma*** vs. ***Ram Adhar Sharma*** *(supra)*

(b) ***Mange Ram*** vs. ***Brij Mohan & Ors.***[2]

(c) ***Scindia Potteries & Services P. Ltd.*** vs. ***J.K. Jain & Anr.***[3]

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1 (2009) 11 SCC 47
2 (1983) 4 SCC 36
3 2012 SCC Online Del 5296

(d) ***Ram Sarup Gupta*** vs. ***Bishun Narain Inter College & Ors.***[4]

(e) ***Nepal Das & Anr.*** vs. ***Aditi Deori & Ors.***[5]

(f) ***Manguesh Rajaram Wagle*** vs. ***Suresh D. Naik***[6]

(g) ***Dugaputi Sudhakar Reddy*** vs. ***Avulapati Shankar Reddy & Ors.***[7]

(h) ***P. Sankaran*** vs. ***Dr. Ambujakshan Nair***[8]

(i) ***Ram Bihari Yadav*** vs. ***State Of Bihar***[9]

(j) ***The State of U.P*** vs. ***Raj Narain & Ors.***[10]

4.(i) Resisting the arguments forwarded by learned Senior Counsel for the Petitioners, learned Senior Counsel for the Respondent No.3 vehemently contended that the question of resurrecting the *Tsurphu Labrang* matter does not arise as in the first instance it was never closed. The attention of this Court was drawn to the proceedings before the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No.22903 of 2003, dated 05.07.2004, from the Judgment and Order dated 26.08.2003 in WP 5/03 of this High Court being *Tsurphu Labrang vs. Karmapa Charitable Trust and Others*. It was pointed out that although the Hon'ble Supreme Court observed that there was no reason to interfere with the Judgment of this High Court *(supra)* and dismissed the Special Leave Petition, it was clarified unequivocally in the same Order that *"…the trial court will not take into consideration any observations made in the impugned order or in the order of the District Judge dismissing the application*." Learned Senior Counsel sought to elucidate that the learned Trial Court had at the relevant time, rejected the application for impleadment of the *Tsurphu*

[4] (1987) 2 SCC 555
[5] (2011) 5 Gauhati Law Reports 23
[6] 2016 SCC Online Bom. 7854
[7] 2005(1) A.P.L.J. 245 (HC)
[8] 1989 SCC Online Ker. 237
[9] (1998) 4 SCC 517
[10] (1975) 4 SCC 428

Labrang as a party in the Title Suit *inter alia* on grounds that the Suit was filed by the majority of the Trustees and they sufficiently represented the case of the *Tsurphu Labrang,* who had in any event, failed to show how its interest was involved. The Hon'ble High Court while considering the impugned Order of the learned Trial Court under an application filed by the *Tsurphu Labrang* under Articles 226 and 227 of the Constitution, read with Section 115 of the CPC, *inter alia* reiterated that the *Tsurphu Labrang* had not been able to indicate how its interest was involved in the Suit. Also, that the findings of the learned Trial Court were pure findings of fact which could not be upset by the High Court in its jurisdiction under Article 227 of the Constitution and thereby dismissed the petition. That, it is in this context that the Order of the Hon'ble Supreme Court *(supra)* came to be pronounced and should not be misinterpreted by the Petitioners. That, the rejoinder of the Petitioners herein seeks to make out that the Hon'ble Supreme Court in its Order was referring to the 'conduct' of the *Tsurphu Labrang*, but a reading of the said Order reflects that there is indeed no mention of the 'conduct' of the *Tsurphu Labrang* nor was such an observation made. Hence, the submission of the learned Senior Counsel for the Petitioners that the matter of *Tsurphu Labrang* has been closed is an erroneous submission before this Court.

(ii) That, the reliance of the Petitioners on the ratio of ***Ashok Sharma*** *(supra)* before this Court is misplaced as the Hon'ble Supreme Court had upheld the order of the Hon'ble High Court of Delhi, which while discussing the provisions of Order XVI Rule 1 and Rule 1A of the CPC had set aside the order of the learned Trial

Court which had disallowed the witness to furnish additional documents after closure of Plaintiff's evidence and allowed the documents to be taken on record. That, the allegation of the Petitioners herein that the documents are manufactured subsequently is devoid of any proof whatsoever. Merely because the documents have been allowed by the learned Trial Court after closure of the evidence of the Petitioners and the Respondents No.1 and 2, does not prejudice the Petitioners' case as law affords them with ample opportunity to controvert the documents at the stage of cross-examination. The Petitioners by impugning the Order of the learned Trial Court seek to block relevant and genuine documents of the Respondent No.3 in order to jeopardize his interests.

(iii) Learned Senior Counsel put forth the clarification that the documents were produced by the witnesses voluntarily during the preparation of their Evidence-on-Affidavit and the Respondent No.3 was unaware of the existence of such documents, while some of the documents came into existence post the filing of the Suit. Besides, nothing in law prohibits a party from introducing documents in a Suit even if it pertains to the period subsequent to the cause of action nor are the witnesses to be limited to depose only on the facts that the party calling them are aware of. The Petitioners, in fact, received copies of the additional documents as soon as it was filed by the Respondent No.3 and therefore had sufficient time to examine the same but raised no objections then and are raising such objections now, rather belatedly. That, the Petitioners' argument that the documents are irrelevant have, in fact, been met with the reasons and relevance of each of the documents of the Respondent No.3, in his application under Order

VIII Rule 1A(3) read with Section 151 of the CPC. Learned Senior Counsel walked this Court through the contents of the said petition filed before the learned Trial Court. That, the learned Trial Court, by the impugned Order, has given adequate reasons for allowing the petition of the Respondent No.3 and has observed that though the Petitioners assail the concerned documents on grounds of its admissibility, this would not be the appropriate stage for examining this aspect. That, in view of the reasons posited regarding the relevance of the twelve documents and the reasoned finding of the learned Trial Court in the impugned Order, this petition deserves a dismissal. Learned Senior Counsel for the Respondent No.3 garnered support for his submissions from the following decisions:

(a) ***Ashok Sharma*** vs. ***Ram Adhar Sharma*** (*supra*);

(b) ***Mange Ram*** vs. ***Brij Mohan*** (*supra*);

(c) ***Santveer Sing***h vs. ***Addl. Civil Judge, Hanumangarh***[11];

(d) ***M/s Sadhu Forging Limited*** vs. ***M/s Continental Engines***[12];

(e) ***Bhanumathi*** vs. ***Sarvothaman***[13];

(f) ***Rajah R.V.G.K. Ranga Rao*** vs. ***Nizams Sugars Limited***[14]; and

(g) ***Manguesh Rajaram Wagle*** vs. ***Suresh D. Naik***[15]

5. Learned Assistant Government Advocate for the State-Respondents No.1 and 2 had no submissions to make.

6. Due consideration has been given by me to the rival contentions advanced by learned Senior Counsel for the parties. I have also carefully perused all documents placed before me including the impugned Order and the citations made at the Bar.

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11 2004 SCC OnLine Raj 59

12 2017 SCC Online Del 10039

13 2010 SCC OnLine Ker 373

14 2003 SCC OnLine AP 979

15 2016 SccOnLine Bom 7854

7. While considering the matter, it would be worthwhile to discuss the ratiocination relied on by learned Senior Counsel for the Petitioners. In ***Ram Sarup Gupta*** *(supra)*, the Hon'ble Supreme Court had held that all necessary and material facts should be pleaded by the party in support of the case set up by it. In the absence of pleadings, evidence if any, produced by the parties cannot be considered. Having considered this ratio, it is necessary to remark here that learned Senior Counsel for the Petitioners failed to specify to this Court as to which specific deficit emanated in the pleadings of the Respondent No.3 over and above which he sought to produce evidence. Hence, this Judgment is of no assistance to the Petitioners' case. In the case of ***Nepal Das & Anr.*** *(supra)*, the Hon'ble High Court of Gauhati upheld the Order of the learned Trial Court rejecting the prayer of the Defendants to produce additional documents. While discussing Order VIII Rule 1A of the CPC it was *inter alia* held that leave has to be granted bearing in mind certain conditions precedent and that the reasons for granting leave may vary from case to case. The Hon'ble High Court also found that there was complete absence of any discernible explanation from the materials on record, as to why the Defendants had not filed a list of documents enlisting therein any of the documents, which they sought to rely upon and thereby concluded that in the circumstances aforementioned, the learned Trial Court's decision not to allow the Defendants to produce the documents was wholly justified and in accord with law. In my considered opinion, the ratio *(supra)* would not assist the case of the Petitioners herein as contrary to the findings therein, the Respondent No.3 in his petition under Order VIII Rule 1A(3) read with Section 151 of the CPC has

furnished sufficient grounds to explain the delay in the filing of the documents, the reasons as to why they could not be filed earlier as also their relevance. The learned Trial Court as evident from the impugned Order was satisfied by the grounds furnished by the Respondent No.3. The Petitioners have also placed reliance on ***Dugaputi Sudhakar Reddy*** *(supra),* wherein while discussing the provisions of Order VIII Rule 1A(3) of the CPC, the Hon'ble High Court of Andhra Pradesh held that by this provision, the Defendant is permitted to produce such documents with the leave of the Court and the same may be received in evidence subject to the satisfaction of the Court, which shall be granted based on reasons found to be justifiable, believable and capable of rendering justice by deciding all issues. The discretion thus vests on the Court to consider whether the grounds put forth are satisfactory. In ***Mange Ram*** *(supra)*, the Hon'ble Supreme Court while discussing the provisions of Order XVI Rule 1 and Rule 1A of the CPC *inter alia* held that;

> "**9**. …Marginal note of Rule 1-A reads as 'Production of witnesses without summons' and the rule proceeds to **enable a party to bring *any* witness to give evidence or to produce documents without applying for summons under Rule 1**. ……
> Rule 1-A of Order 16 clearly brings to surface the two situations in which the two rules operate. Where the party wants the assistance of the court to procure presence of a witness on being summoned through the court, it is obligatory on the party to file the list with the gist of evidence of witness in the court as directed by sub-rule (1) of Rule 1 and make an application as provided by sub-rule (2) of Rule 1. **But where the party would be in a position to produce its witnesses without the assistance of the court, it can do so under Rule 1-A of Order 16 irrespective of the fact whether the name of such witness is mentioned in the list or not**."
>
> **(Emphasis supplied)**

We may extract the relevant provisions of Order XVI Rule 1 and Rule 1A of the CPC hereinbelow for easy reference;

> "**Order XVI**
> **Summoning and Attendance of Witnesses**
>
> **1. List of witnesses and summons to** witnesses.—(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.
>
> (2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.
>
> (3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.
>
> (4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court in this behalf [within five days of presenting the list of witnesses under sub-rule (1).
>
> **1-A. Production of witnesses without summons**.—Subject to the provisions of sub-rule (3) of Rule 1, any party to the suit may, without applying for summons under Rule 1, bring any witness to give evidence or to produce documents."

Reverting back to the decision in ***Mange Ram*** *supra*, in light of the elucidation of the scheme and purpose of Order XVI Rule 1A of the CPC by the Hon'ble Supreme Court, it is clear that the ratio holds no succour for the Petitioners' case.

8. In ***Scindia Potteries & Services P. Ltd.*** *(supra),* the Hon'ble High Court of Delhi while considering the provisions of Order VIII Rule 1A(3) of the CPC, concluded that the Defendant No.1 had failed to show sufficient cause for belated production of the said documents and no satisfactory reason was offered as to why he should be granted liberty to place them on record now, besides demonstrating a complete lack of diligence in seeking permission to produce the documents in question. That, it could not be stated that

he was earlier unaware of the existence of the said documents. This Judgment, to my mind, clearly does not aid the case of the Petitioners herein being distinguishable from the facts and circumstances put forth by the Respondent No.3 with regard to the documents sought to be exhibited through his witnesses. The documents, it is clarified by Respondent No.3, were neither in his power or possession nor was he aware of their existence to enable him to produce the documents earlier. On pain of repetition, it may be stated here that the Respondent No.3 has laboured to explain that the documents were produced by the witnesses themselves when their Evidence-on-Affidavit was being prepared, therefore lack of diligence or lack of promptitude cannot be attributed to the Respondent No.3 unlike the conduct of the Defendant No.1 in ***Scindia Potteries & Services P. Ltd.*** *(supra)* as evident from the observations made therein.

9. In ***Manguesh Rajaram Wagle*** *(supra),* the Hon'ble High Court of Bombay at Goa, while discussing the provisions of Order XIV Rule 3 and Order VII Rule 14 of the CPC held that the impugned Order passed by the learned Trial Court would show that it had considered the case of the Plaintiffs seeking to produce two Files and had concluded that the Plaintiffs had not stated the relevance of each of the documents contained in the File. The Hon'ble High Court upheld the findings of the learned Trial Court. In this context, I have to observe that in the matter at hand, the Respondent No.3 has cited the relevance of each document in his petition before the learned Trial Court which was reiterated by learned Senior Counsel before this Court.

10. Reliance was placed on ***P. Sankaran*** *(supra)*, this ratio deals with the provisions of Section 136 of the Indian Evidence Act, 1872 (for short, "Evidence Act") which lays down that the Judge is to decide the admissibility of the evidence. It was observed therein *inter alia* that when the accused wanted to cite the Counsel representing the complainant as a witness, the learned Magistrate should have asked in what manner the evidence would be relevant for the disposal of the case. The Magistrate should have issued summons only if he thought that the evidence would be relevant for the decision. Such a duty is cast on him under Section 136 of the Evidence Act. By citing this decision, the learned Senior Counsel for the Petitioners sought to impress upon this Court that it was the duty of the learned Trial Court to have considered the relevance of the twelve additional documents before allowing the petition under Order VIII Rule 1A(3) of the CPC. The learned Trial, in the impugned Order has mentioned that the question of admissibility of the documents had not arisen as yet and that the Court had only considered the grounds pertaining to relevance of the documents. In ***Ram Bihari Yadav*** *(supra)* relied on by the Petitioners deals with Sections 3 and 5 of the Indian Evidence Act and it was observed therein that more often than not the expressions "relevancy" and "admissibility" are used as synonyms but their legal implications are distinct and different for more often than not facts which are relevant may not be admissible, for example, a communication made by spouses during marriage or between an Advocate and his client though relevant are not admissible. The Judgment thus makes a clear distinction between the 'relevance' of a document and its 'admissibility,' setting at rest the perplexity of the Petitioners on this

count. Similarly, in ***State of U.P.*** vs. ***Raj Narain and Others*** *(supra)* the Hon'ble Supreme Court has held that 'admissibility' presupposes 'relevancy.' Pausing here for a minute, it is worth noticing that this observation does not state that 'relevancy' presupposes 'admissibility' as well. In the instant case, the question of admissibility, as earlier noted, has not arisen as yet as spelt out in the impugned Order of the learned Trial Court. Hence, the ratio *supra* too provides no support to the Petitioners' case. In any event, it may relevantly be remarked herein that a distinction has to be made by the parties and the learned Courts with regard to admissibility, relevance and probative value of the documents.

11. In ***Ashok Sharma*** *(supra)* relied on by both parties, the learned Senior Counsel for the Petitioners sought to emphasize that the learned Trial Court in the impugned Order failed to appreciate that the Hon'ble High Court of Delhi after examining the provisions of Order XVI Rule 1 and Rule 1A of the CPC, had directed the documents to be produced and taken on record thereby reversing the Order of the learned Trial Court which had refused to take the documents on record. In the instant matter, however, the act of the witnesses of the Respondent No.3 were voluntary and without any directions from any Court and therefore could not be taken on record. On this count, learned Senior Counsel for the Respondent No.3 had contrarily argued that the reliance by the Petitioners on this ratio was misplaced. Having perused the said Judgment, I am inclined to agree with the submissions of learned Senior Counsel for the Respondent No.3 as the Hon'ble Supreme Court *inter alia* observed as follows;

"**15**. As noted hereinearlier, Order 16 Rule 1 and Rule 1-A of the Code, if read together, would clearly

> indicate that it is open to a party to summon a witness to the court or even may, without applying for summons, bring a witness to give evidence or to produce documents. Since Rule 1-A is subject to the provisions of sub-rule (3) of Rule 1, all that can be contended is that before proceeding to examine any witness, who might have been brought by a party for the purpose, the leave of the court may be necessary. This by itself would not mean that Rule 1-A was in derogation of sub-rule (3) of Rule 1. Such document brought by the said witness can be taken on record and it is not necessary that the plaintiff must have filed on record the copies of the said document earlier."

The Hon'ble Supreme Court further went on to discuss the provisions of law as expostulated in ***Mange Ram*** *(supra)* and ***Vidhyadhar*** *(supra)* and held that;

> "**17**. **While considering the scope of Order 16 Rule 1 and Rule 1-A of the Code, this Court in *Mange Ram* v. Brij *Mohan*** *[(1983) 4 SCC 36]* held that the court cannot decline to examine the witnesses produced by the plaintiff nor could the court refuse to take the documents on record through the witnesses.
> ……..…
> **18**. **Again in *Vidhyadhar* v. *Manikrao*** *[(1999) 3 SCC 573]* this Court following the decision of *Mange Ram* v. *Brij Mohan [(1983) 4 SCC 36]* has also held that Order 16 Rule 1 and Rule 1-A of the Code permits the court to pass the order directing the witnesses to take the documents on record. Only while dealing with the application for production of documents under Order 16 Rule 1 read with Rule 1-A of the Code, what is required was that leave of the court would be necessary.
> ....."
>
> **(Emphasis supplied)**

Now therefore, in view of the clear exposition of law as obtains in Order XVI Rule 1 and Rule 1A of the CPC by the Hon'ble Supreme Court, it is not necessary for this Court to enter into a prolix discussion on this legal provision. Suffice it to note that the party who seeks to examine any other witness sans appearance of their names in the list furnished before the Court, is required to show sufficient cause for the omission and such Court, for reasons to be recorded, can exercise its discretion and permit the party to call such witness either by summons or otherwise for the purposes of

giving evidence and for production of documents. Concomitant to this provision are the provisions of Order XVIII Rule 4 of the CPC which provides as follows;

> "**4. Recording of evidence**.(1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence;
>
> **"...Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.**
>
> **..."**
>
> **(Emphasis supplied)**

On the same lines due consideration is also to be taken of the provisions of Order XIII Rule 2(3) of the CPC which lays down as follows;

> "**3. Rejection of irrelevant or inadmissible documents**.- The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection."

This provision empowers the Court to reject a document at any stage of the Suit if it is found either to be irrelevant or otherwise inadmissible. The Court can thus take necessary steps even if no objection is raised by any party with regard to any document, should the Court be of the opinion that the document would be of no assistance in the final and complete adjudication of the issues in *lis.*

12. That having been said, we may now refer to and consider the provisions of Order VIII Rule 1A of the CPC which was inserted by the amendment of 2002 and came into effect from 01.07.2002. This provides as follows;

> "**1-A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him**.- (1) Where the defendant bases his defense upon a document or relies upon any document in his

> **possession or power**, in support of his evidence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.
>
> (2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.
>
> (3) **A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit**.
>
> ……..."
>
> **(Emphasis supplied)**

The emphasis in Rule 1A(1) *supra* is on the words "possession or power." Hence, the provision unambiguously casts a duty on the Defendant to produce documents upon which either the relief is claimed by him or on which he relies upon, when such a document or documents are in his possession or power. Should the document(s) not be in his possession or power then the Defendant shall inform the Court as to in whose power or possession the document is in. Rule 1A(3) of the CPC requires that when such document(s) which ought to have been produced by the Defendant but have not been so produced, cannot be received in evidence on his behalf without the *leave of the Court.* It thereby concludes that should the Defendant fail to file a document in terms of the provisions of Order VIII Rule 1 of the CPC, he may do so under the provisions of Order VIII Rule 1A (3) of the CPC, subject to the leave of the Court. The Court, under this provision, is to exercise its powers judiciously at the same time considering the *bona fides* of the party, the reasons put forth by the party and the relevance of the document as well as reasons for its non-filing earlier. Should the Court be satisfied with the grounds furnished by the concerned

party then and only then shall it grant leave to the party making the prayer to file the documents.

13. The learned Trial Court in the impugned Order while exercising its discretion under Order VIII Rule 1A (3) of the CPC allowed the application of the Respondent No.3 on due consideration of the grounds put forth by the Respondent No.3, which for brevity are not being reiterated here. The Respondent No.3 has clarified that he had no inkling as to the existence of these documents for the reasons already given in his petition filed before the learned Trial Court. In my considered opinion, this shows the *bona fides* of the Respondent No.3.

14. The Petitioners harbor apprehensions on the count that as *Shamarpa Rinpoche* has since passed, the authenticity of his signature cannot be tested. This is an uncalled for apprehension as the Indian Evidence Act, 1872 makes adequate provision for such contingencies. The argument that the case of the Petitioners is jeopardized by the belated and *mala fide* steps of the Respondent No.3 cannot be countenanced as the Petitioners will be afforded sufficient opportunity to controvert and refute the documents during cross-examination besides the steps taken by the Respondent No.3 cannot be stated to be *mala fide.*

15. The argument advanced by learned Senior Counsel for the Petitioners pertaining to the efforts of the Respondent No.3 at resurrecting the *Tsurphu Labrang* is not being ventured into, in any event, parties would do well to carefully peruse and consider the Orders of the Hon'ble Supreme Court in ***Tsurphu Labrang*** vs. ***Karmapa Charitable Trust and Others*** *(supra),* to which the attention of this

Court was invited by learned Senior Counsel for the Respondent No.3 earlier on.

16. In conclusion, it is apposite to observe that no fixed formula can be provided for leave to be granted by the Court under Order VIII Rule 1A(3) of the CPC. The learned Trial Court herein deemed it appropriate to grant leave in the facts and circumstances as obtained in the matter on due consideration of the grounds put forth by the Respondent No.3. I have also given careful consideration to the grounds for the belated filing of the documents by the Respondent No.3 and the reasons enumerated by learned Senior Counsel for the said Respondent and I am satisfied with the grounds thus put forward.

17. While considering the entire gamut of facts and circumstances placed before this Court, the relevant provisions of law, the ratio relied on by the parties and the reasons given by the Respondent No.3 and by the learned Trial Court in its Order, no interference is warranted in the impugned Order.

18. The petition being devoid of merit deserves to be and is accordingly dismissed and disposed of. Pending applications, if any, also stand disposed of.

19. No order as to costs.

20. Copy of this Judgment be forwarded to the learned Trial Court for information.

MEENAKSHI MADAN RAI
Digitally signed by MEENAKSHI MADAN RAI
Date: 2020.09.28 12:31:44 +05'30'

(Meenakshi Madan Rai)
Judge
28.09.2020

ml/ds Approved for reporting : **Yes**