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

% ***Date of decision:* 29.08.2016**

+ C.R.P. No.130/2016

TARUN NAGPAL

..... Petitioner

Through Mr.Sumit Jidani, Advocate

Versus

M/S AUTO INCLINE AND ANR.

..... Respondents

Through Mr.Maninder Jeet Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present revision petition under Section 115 of the CPC is filed by the petitioner to challenge the order dated 21.04.2016 by which an application filed by the petitioner/plaintiff furnishing a certificate under Section 65-B of the Indian Evidence Act, 1872 was dismissed.
2. The petitioner/plaintiff has filed the suit for recovery of Rs.1,12,911/- along with *pendente lite* and future interest with regard to supply of various goods as described in Invoice Nos.1696 dated 29.03.2011, 1733 dated 27.05.2011 and 1738 dated 07.06.2011 for a total sum of Rs.93,626/-.
3. The petitioner filed an affidavit by way of evidence. The examination-in-chief was conducted on 14.05.2015. It is at that stage, the petitioner seems to have realised that he has not placed on record a certificate under Section 65-B of the Indian Evidence Act regarding admissibility of electronic records, i.e. computerized invoices and computerized statement of account at the time of filing of affidavit by way of evidence. Hence, the

application was filed to place on record the said affidavit.

4. The trial court relying upon the judgment of the Supreme Court in the case of “*Anvar P.V. v. P.K.Basheer & Ors., Civil Appeal 4226/2012 dated 18.09.2014*” held that the certificate supporting the electronic evidence has to be filed along with electronic evidence and hence the dismissed the application.

5. I have heard the learned counsel for the parties.

6. The learned counsel for the petitioner has urged that the certificate is already on record of the trial court and was filed on 23.01.2016. He also submits that the court had power to condone the delay in filing of the certificate.

7. Section 65-B(4) of the Indian Evidence Act reads as follows:

“65B. Admissibility of electronic records.-

.....

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.”

8. The Supreme Court in *Anvar P.V. v. P.K.Basheer & Ors.* (supra), held as follows:

“13. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed Under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned Under Sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions Under Section 65B(2). Following are the specified conditions Under Section 65B(2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

14. Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned Under Section 65B(2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

15. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.”

9. Hence, when any information contained in any electronic record, which is printed on a paper is sought to be produced, the concerned party

has to file a certificate as stipulated under Section 65-B for the purpose of proof of the document.

10. The judgment of the Supreme Court or the Indian Evidence Act does not show that in case the certificate is produced at a later date after a party having filed the evidence contained in an electronic record, then he is debarred from filing the certificate. The trial court has erroneously concluded that in view of the judgment of the Supreme Court in *Anvar P.V. v. P.K.Basheer & Ors.* (supra), the certificate cannot be filed subsequent to filing any evidence contained in an electronic record. Allowing such a certificate to be placed on record would be at the discretion of the court.

11. Accordingly, the impugned order suffers from material irregularities. The same is quashed. As the certificate is already on the record of the trial court, the said certificate is taken on record of the trial court, subject to payment of cost of Rs.3,000/-.

12. Petition stands disposed of.

JAYANT NATH, J.

AUGUST 29, 2016

v

Signed on 23.12.2016.