

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 7162 OF 2015

|                              |               |
|------------------------------|---------------|
| Britannia Industries Limited | .. Petitioner |
| vs.                          |               |
| Mrs Maya Sunil Alagh         | .. Respondent |

Ms Ranjana Parikh for the Petitioner.  
Mr. PS. Dani, Sr. Advocate for the Respondent.

**CORAM : M. S. SONAK, J.**  
**DATE : 11 SEPTEMBER 2015.**

**P.C. :-**

1] This petition challenges the portions of the order dated 24 June 2015, by which some documents which are more than thirty years old are allegedly not permitted to be exhibited. Further, there is an observation that even the secondary evidence is to be led in the form of examining official from Registrar of Companies or obtaining certified copies thereof. The relevant paragraphs, upon which challenge is focused, read as follows:

*“Ld Advocate for applicant has submitted that mere fact of 30 years old documents is not sufficient. The contents of agreements are not proved. There is no whisper in the examination-in-chief of respondent's witness as to whereabouts of the official who put signature for and on behalf of respondent. I agree with submission of Ld. Advocate for applicant only because agreements are 30 years old, they cannot be exhibited. However, for the purpose of identification they are marked Articles Y & Y1.*

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*As regards annexures E,F,G,H,I,J,K,L,Q & V are copies of annual return, form 32, form 45. Ld. Advocate for respondent has argued that carbon copies from the status of primary evidence. He has relied on case of **Prithi Chand Vs. State of Himachal Pradesh (AIR 1989 SC 702)** wherein it is held that Evidence Act (1 of 1872) Section 32 and 62, Expln.2, carbon copy made by one uniform process of certificate of doctor given in discharge of professional duty. Doctor's attendance could not be procured without an amount of delay. Copy is admissible in view of Sec. 32. Also admissible, being primary evidence within explanation 2 of Section 62.*

*The request of adducing secondary evidence pertaining to these copies is already granted to the respondent and after examining official from Registrar of Companies or obtaining certified copies, respondent will be in a position to prove the same. However, at this stage these copies cannot be exhibited. Hence, for the purpose of identification they are marked Article Y2 to Y11 respectively.*

2] Insofar as the first of the aforesaid paragraphs is concerned, it is made clear that same should be construed as the 30 years old documents been marked in evidence. However, this shall not obviate necessary for the proof of contents thereof, by the parties which seeks to rely upon them.

3] Insofar as the remaining paragraphs are concerned, the objection was to observations regarding examining of official from Registrar of Companies or obtaining certified copies. In this regard, reference is rightly made by Ms Parikh to the order dated 24 June 2015, by which the petitioner's application for production of

secondary evidence in respect of documents at annexures - B, D, E, H, J, N colly., O colly. and P colly. and annexures- Y, Z colly., AA colly., BB colly., EE colly., II and JJ to the list of documents of additional affidavit of evidence, was in fact granted. In the said order dated 24 June 2015, the Trial Court has observed that copies of these documents '*will form the status of secondary evidence*'. This order dated 24 June 2015 was not challenged by the opposite party. In these circumstances, there was no necessity of observing that the petitioner will be in a position to prove the documents after examining official from Registrar of Companies or obtaining certified copies. However, it is clarified once again that mere production of these documents or even marking of the same in the evidence will not obviate necessary for proving the contents thereof.

4] With the aforesaid observations and clarifications, this petition is disposed of.

**(M. S. SONAK, J.)**

**CERTIFICATE**

**“I certify that this Order uploaded is a true  
and correct copy of original signed Order.”**