

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.796 of 2016

ORDER:

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

2. This Civil Revision Petition is filed challenging the order dt.21-01-2016 in E.O.P.No.1 of 2013 passed by the Principal Junior Civil Judge, Palakollu admitting secondary evidence i.e. photo copies of Fax Message Receipts (sending reports) which were sent through the Fax No.08812-245757 to the Fax Nos.(1) 040-27544580, (2) Narasapur and (3) 08812-230052.

3. Petitioner herein is the 1st respondent in the E.O.P. The 1st respondent herein filed the said E.O.P. to declare the election of the petitioner to the post of Sarpanch of Valluru Gram Panchayat held on 31-07-2013 as void, to set aside the said election and to declare that the 1st respondent was duly elected to the said post in the said election. The said E.O.P. was filed in August 2013.

4. It is specifically alleged that in that election, the counting of the votes was not properly done and that 1st respondent had sent a grievance in that regard to the State Election Commission and to respondent Nos.8 to 11 in the E.O.P. and that this grievance was registered in a Complaint No.60745 dt.01-08-2013 in the office of the 8th

respondent in the E.O.P. Copies of Fax Message Receipts relating to sending of these complaints/letters dt.01-08-2013 to the Election Commissioner, Hyderabad, District Collector, West Godavari District at Eluru, Sub Collector, Narsapur, District Panchayat Officer, Eluru, MPDO, Achanta through fax were also filed along with the Election Petition.

5. After the counter was filed by the petitioner, the trial in the E.O.P. commenced.

6. Thereafter, the 1st respondent filed I.A.No.627 of 2015 under Order VII Rule 14 CPC read with Sections 63 and 65 of the Indian Evidence Act,1872 alleging that she had sent her grievance to the above persons and also to the State Election Commissioner on 01-08-2013 through Fax and the originals of the four sending Reports were filed along with the E.O.P. as document No.6 and photo copies of the same were also filed for service on the respondents; copies of the said Fax Message Receipts (Sending Reports) along with other documents were served on the respondents through the Court; the printed matter of the said original Fax Message Receipts (Sending Reports) had faded in their entirety at the time of marking the same in the evidence of 1st respondent; the 1st respondent was having photo copies of the said Fax Message Receipts (Sending Reports); those photo copies were taken from the original

of the Fax Message Receipts (Sending Reports) which are mentioned as list of document No.6 in E.O.P., that the 1st respondent had approached Manikanta Xerox, through whom, the Fax Messages had been sent and requested the said shop about the fax receipts, but he expressed his inability since he had not stored in his fax machines. The 1st respondent contended that there was no possibility of producing originals with printed matter and it was beyond his control to get either the originals or copies of the Sending Reports, and so the photo copies of the same may be received as secondary evidence and marked in his evidence.

7. Counter affidavit was filed by the petitioner opposing the said application. He alleged that the entire society depends upon technology and if the petitioner had really sent fax message to the official respondents, she would preserve the original Fax Message Report in another mode; since this was not done, the photo copies of the Fax Message (Sending Reports) sought to be filed by the petitioner cannot be received.

8. By order dt.26-11-2015, initially the Court below allowed the application and decided to receive the documents in exercise of its power under Order VII Rule 14 CPC observing that proof of validity of those documents can be decided during the trial.

9. Thereafter, on 21-01-2016, the Court below

passed a separate order permitting the documents sought to be filed by 1st respondent as secondary evidence and posted the matter for marking of the documents and for cross examination of P.W.1 to 04-02-2016.

10. It referred to the contentions of the petitioner and held that 1st respondent had specifically mentioned about the issuing of Fax Messages and the date of the messages in her pleadings, that the Fax Message Receipts were filed along with E.O.P. and are not new documents. It observed that since the print thereon was not visible, 1st respondent is seeking to file photo copies of the said receipts. It held that original documents were not available and the print on the documents originally filed by 1st respondent had disappeared due to lapse of time since they were Fax Message Receipts. It observed that the contents of the documents when compared with the description mentioned in the petition as well as with the documents filed earlier indicate that the documents sought to be filed are not new ones and in the absence of any primary evidence, the secondary evidence cannot be opposed and these documents can be marked as exhibits. It observed that the question whether 1st respondent sent the messages or not cannot be decided at the stage of marking of the documents and the same can be received in the evidence. It also relied on Section 65-B of the Evidence Act, 1872 and observed that these

documents proposed to be marked are the output of a computer and it is an electrical record which can be accepted as evidence particularly when the print on the original documents filed by 1st respondent along with E.P. had disappeared. So the photo copies which are visible can be accepted as secondary evidence as per Section 65 of the Evidence Act, 1872.

11. Learned counsel for the petitioner contended that this order of 21-01-2016 is contrary to law and there is no proper explanation regarding the original of the Fax Receipts and if really the originals were existing at the time of filing of the E.O.P., the 1st respondent would have taken attested copy of the originals.

12. Learned counsel for the 1st respondent refuted the above submissions and supported the order passed by the Court below.

13. It cannot be denied that the receipt obtained on sending of a Fax Message is an electronic record which is printed on paper and would fall within the scope of Section 65 (B) of the Act, 1872.

14. Under Section 65 (C) of the Act, 1872, when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time, secondary evidence may

be given of the existence, condition, or contents of such document.

15. In the present case, the original of the Fax Messages had been filed along with the E.O.P. and due to lapse of time, their contents got erased. It cannot be said that there was any default or neglect on the part of the 1st respondent in the erasure of the contents on the originals of the Fax Receipts filed along with the E.O.P. The learned counsel for the petitioner was not able to point out how the 1st respondent could be said to be negligent.

16. He also does not dispute the fact that print outs such as those obtained from fax machines as well as Automatic Teller Machines would fade with the passage of time.

17. In the light of this admitted factual position which the Court has to take judicial notice, it cannot be said that 1st respondent was not entitled to file photocopies of the original of the documents (Fax Sending Receipts). So the Court below had not committed any error in permitting them to be received as secondary evidence. I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

18. Accordingly, the Civil Revision Petition is

dismissed. No costs.

19. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 03-06-2016

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