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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO.11782 OF 2017

Deepali Santosh Lokhande	..Petitioner
Vs.	
Mr.Santosh Vasantrao Lokhande	..Respondent

Mr.Abhijit D.Sarwate for Petitioner.
Mr.Ganesh Sovani for Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 20th DECEMBER, 2017

ORAL ORDER:

Heard learned Counsel for the parties.

2. The challenge in this petition is to an order passed by the learned Judge, Family Court at Pune rejecting application dated 18th August 2017 filed on behalf of the petitioner-wife, by which the petitioner had prayed that the documents produced by her (Exhibits 198 and 292) along with her application being medical bills, receipts issued by the school authorities, prescriptions, medical receipts, hospital discharge card, x-ray reports etc. be exhibited in the proceedings. This application was

contested by respondent-husband contending that before these documents are exhibited, the documents are required to be proved by the petitioner by examining the author of the documents or such appropriate witnesses. The learned Judge of the Family Court considering rival pleas and treating those documents as electronic evidence falling within the purview of the provisions of Section 65B of the Indian Evidence Act, has rejected the said application by the impugned order. A review application against the said order was also rejected.

3. Learned Counsel for the petitioner, in assailing the impugned order, contends that there is an apparent error in the Family Court passing the impugned order in as much as the purport of the provisions of Section 14 of the Family Courts Act has been completely overlooked in applying the provisions of Section 65B of the Indian Evidence Act, which is a provision dealing with a proof of electronic record namely, bills, receipts, etc., generated by computers. It is submitted that in view of the specific provisions of Section 14 of the Family Courts Act, the contention that the document first is required to be proved before the same is exhibited ought not to be accepted. It is submitted that Family Courts Act is

a special Act and the Evidence Act is the general law and thus, Section 65B of the Evidence Act is not applicable when it comes to relevancy and admissibility of documents in the proceedings before the Family Court, considering the provisions of Section 14 of the Family Courts Act. It is, therefore, submitted that the impugned order be set aside by directing the Family Court to exhibit the documents as sought to be produced.

4. Learned Counsel for the respondent would also not dispute the above legal propositions. He would however submit that on proper application of Section 14 of the Family Courts Act, acceptability of the evidence on these document be left to be decided by the Family Court. He submits that this Court may also consider the effect of Section 14 of the Family Courts Act on such applications.

5. Having considered the submissions as urged on behalf of the parties, it is quite clear that the proceeding before the Family Court would stand on a different footing from the proceeding before the regular Civil Courts where the rigour of the provisions of the Evidence Act are fully applicable for the Civil

Court to evaluate the evidence on preponderance of probabilities and for that matter even the proof of electronic record. It is apposite to examine the provisions of Section 14 of the Family Courts Act which reads as under:-

“14. **Application of Indian Evidence Act, 1872.-A** Family Court **may receive as evidence** any report, statement, **documents, information** or matter that may, in its opinion, assist it to deal effectually with a dispute, **whether or not the same would be otherwise relevant or admissible** under the Indian Evidence Act, 1872 (1 of 1872).”

(Emphasis supplied)

6. A plain reading of the above provision clearly indicates that the intention of the legislature is to permit the Family Court to receive as evidence any report, statement, documents, information or matter which in its opinion would assist the Family Court to deal effectually with a dispute irrespective of whether the same would otherwise be relevant or admissible under the Indian Evidence Act. Significantly the words “*Whether or not the same would be otherwise relevant or admissible under the Evidence Act 1872*” surely have a different import. The object, effect and consequence of this provision is to remove any embargo on the Family Court to first examine the relevancy or admissibility of the documents under Indian Evidence Act in considering such

documents in adjudication of the matrimonial dispute. The Statement of Object and Reasons leading to the enactment of the Family Court's Act would also become a guiding factor so as to ascertain the intention of the legislature in framing Section 14 when it uses the above words. One of the objects of the legislation as Clause 2 (h) of the Statement of Object and Reasons would provide is “*simplify the rules of evidence and procedure so as to enable a Family Court to deal effectively with a dispute*”. This clearly manifests the intention of the legislature to remove complexities in the application of rules of evidence to make the procedure more comprehensible so as to enable a Family Court to deal effectively with a matrimonial dispute under the Family Courts Act, which is a special Act.

7. When Section 14 stipulates and says that the Family Court can receive a document in evidence irrespective of the same being relevant or admissible in evidence under the Evidence Act, it signifies two important facets namely that the Family Court at the threshold cannot reject a document on the ground that the document is not legally admissible in evidence and secondly the test and rigor of relevancy and admissibility of the

document can be dispensed with by the Family Court if the Family Court is of the opinion that any evidence would assist it to deal effectively with the dispute. It cannot be disputed that admissibility presupposes relevancy as admissibility is founded on law whereas relevancy is determined by Court using judicial skills, logic and experience. Admissibility does not signify that a particular fact stands proved but merely that such a fact is received by the Court for the purpose of being weighed. The learned Judge overlooked that merely because the documents are marked as Exhibits and the same also becoming available for cross-examination, is neither an admission as to documents nor can be treated as an admission of its contents.

8. The above discussion also finds support if Section 20 of the Family Courts Act is considered which gives an overriding effect to the Family Courts Act over other laws. Section 20 reads thus :-

20. Act to have overriding effect.-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

9. A cumulative reading of section 14 and section 20 of the Family Courts Act, takes within its ambit the restricted applications of the provisions of the Evidence Act qua the documentary evidence which includes electronic evidence, whether or not the same is relevant or admissible, if in the opinion of the Family Court such evidence would assist the Family Court to deal effectively with the matrimonial dispute. Considering the above object and the intention of the legislature, in providing for a departure, from the normal rules of evidence under the Evidence Act, in my opinion, there was no embargo for the learned Judge of the Family Court to accept and exhibit the documents as sought by the petitioner-wife. Ultimately, it is the absolute power and authority of the Family Court either to accept or disregard a particular evidence in finally adjudicating the matrimonial dispute. However, to say that a party would be precluded from placing such documents on record and or such documents can be refused to be exhibited unless they are proved, in my opinion, goes contrary to the object of section 14 of the Family Courts Act.

10. In matrimonial cases, the Family Court is expected to adopt standards as to how a prudent person would

gauge the realities of life and a situation of commotion and turmoil between the parties and applying the principle of preponderance of probabilities, consider whether a particular fact is proved. Thus, the approach of the Family Court is required to be realistic and rational to the facts in hand rather than technical and narrow. It cannot be overlooked that matrimonial disputes involve human problems which are required to be dealt with utmost human sensitivity by using all intelligible skills to judge such issues. The Family Court has a special feature where in a given case there may not be legal representation of the parties. Section 13 of the Act makes such a provision. In such a situation, the parties who are not experts in law cannot be expected to know the technical rules of the evidence qua the relevancy, admissibility and proof of documents. Thus, the strict principles as referred in the impugned order on the decisions which are not under the Family Courts Act, would not be of any relevance in the proceedings before the family Court.

11. Thus, in my opinion, even if there is any electronic record for which certificate under Section 65B of the Evidence Act is necessary, it would not preclude the learned Judge

of the Family Court to exhibit such documents and receive such documents in evidence, on forming an opinion as to whether the documents would assist the Court, to deal effectively with the dispute in hand. Such exercise has not been undertaken in passing the impugned order.

12. In view of the above deliberation, the learned Judge of the Family Court ought to have allowed the application of the petitioner, to place on record the documents in question. The impugned order is accordingly set aside, with a direction that the documents in question be taken on record, however, it will be open to the respondent to contest the acceptance of such evidence in opposing the prayers for any claim being made on behalf of the petitioner.

13. Writ Petition is allowed in above terms. No order as to costs.

[G.S. KULKARNI, J.]