

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.4311/2017

M/s. Shewalkar Developers Ltd., Nagpur, through its Managing Director
..Vs..
Anand S/o Madanmohan Jaiswal

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.P. Khajanchi, Adv. for the petitioner.
Shri R.M. Sharma, Adv. for the respondent.

CORAM : S.C. GUPTE, J.

DATE : 23.8.2017.

Heard learned counsel for the parties.

The present petition challenges an order passed by the Court of Civil Judge, junior Division, Nagpur on an application for production of electronic evidence in the form of a video recording in a pen drive. Learned Judge has permitted the plaintiff to produce the pen drive on the ground that it is a document which can be produced in evidence.

The ground of challenge formulated by learned counsel for the petitioner (original defendant) is that the pen drive cannot be read in evidence and its probative value cannot be considered without a proper proof being tendered of the document. The proof referred to by learned counsel for the petitioner is in terms of Section 65-B of the Indian Evidence Act.

Section 65-B refers to admissibility of electronic record in evidence subject to satisfaction of conditions laid down in Section 65-B. These conditions *inter alia* include a certificate of authenticity in respect of the electronic record. Learned counsel for the petitioner relies on the judgment of the Supreme Court in the case of *Anvar P.V. V/s. P.K. Basheer and others* reported in **(2014) 10 SCC 473**. Relying on this judgment, it is submitted that the question of genuineness of the electronic record can be considered, only if the record is duly produced in accordance with Section 65-B of the Evidence Act.

In the first place, the electronic record is sought to be produced and relied upon in support of a temporary injunction application. It is not sought to be produced in evidence at the trial. The admissibility of the electronic record, thus, from the standpoint of the interlocutory application, has to be considered as a matter of *prima facie* estimation. No doubt, unless the plaintiff *prima facie* proves its admissibility within the meaning of Section 65-B, there is no question of the Court considering the genuineness or authenticity of the document by permitting any other material to be produced in support of such authenticity or genuineness. Anyway, the learned Judge has left the question of authenticity and merit of the document to be considered later in the application. What is meant thereby, as I see it, is that the satisfactory nature at least at the *prima facie* stage of compliance with Section 65-B of the Evidence Act, is a matter which the Court has offered to

consider at the time of the arguments.

In that view of the matter, the impugned order of the learned Civil Judge, Senior Division, Nagpur does not merit any interference. The writ petition is **dismissed** along with the clarification noted above.

JUDGE

Tambaskar.