

A.No.6489 of 2016 in
CS.No.830 of 2009

C.V.KARTHIKEYAN, J.

This application had been filed by the Plaintiff, seeking permission to mark the photocopies of the plaint document nos.8, 11, 12 and 13 as secondary evidence in the above suit.

2. In the affidavit filed in support of this application, it had been stated that the documents filed along with the plaint, namely, document nos.8, 11, 12 and 13 are xerox copies and consequently, permission is sought, by this application, to mark those xerox copies.

3. With respect to the document no.8, which is a lease agreement entered into between the 5th Respondent and the Applicant, the original as well as the certified copy could not be traced. It is, therefore, sought that the xerox copy, which is available, may be produced as secondary evidence.

4. With respect to the document nos.11 and 12, it had been stated that the originals had been produced before the High Court of Delhi in CS(OS)No.1625 of 2007, wherein the Applicant is the Defendant and the certified copies had been misplaced and consequently, the xerox copies are being filed.

5. With respect to the document no.13, it is the cash bill for purchase of CDs from Velu Electronics. It had been stated that the original was handed over to the Officials of CBCID, Video Piracy Cell, during the raid conducted by them on 8.1.2013. It had, therefore, been stated that the xerox copy of the above mentioned documents may be received in evidence.

6. A counter affidavit had been filed by the Respondent/ Defendant, challenging the locus-standi of the deponent of the affidavit, who was a Manager in the Plaintiff Company to file the application. The reasons given with respect document no.8, lease agreement, have been challenged on the ground that the Applicant had not stated as to what happened to the original. It had been stated that the document now produced is a fabricated document and the lessor has no right over the suit Films in S.Nos.30 and 31. With respect to the document nos.11 and 12, again the reason that the original had been handed over during the judicial proceedings in the High Court of Delhi has also been challenged and stated that certified copies should be produced and xerox copies cannot be produced. With respect to the document no.13, it had been stated that the authenticity of the documents itself is in question and consequently, xerox copy cannot be adduced as evidence. The fact that the original has been handed over to the CBCID as stated in the affidavit has also been disputed as false.

7. This court heard the learned counsel on either side.

8. Section 65 of the Indian Evidence Act relates to production of secondary evidence. Section 64 of the Act states that the documents must be proved by primary evidence. Section 65 reads as follows:-

65. Cases in which secondary evidence relating to documents may be given. Secondary evidence may be given of the existence, condition, or contents of a document in the following cases.

(a) When the original is shown or appears to be in the possession or power (of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the court, or of any person legally bound to produce it, And when, after the notice mentioned

in section 66, such person does not produce it;

(b) When the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) 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;

(d) When the original is of such a nature as not to be easily movable;

(e) When the original is a public document with the meaning of section 74;

(f) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India to be given in evidence

(g) When the original consists of numerous accounts or other documents which cannot conveniently be examined in court and the fact to be proved is the general result of the whole collection. In case (a), (c) and (d), any secondary evidence of the contents of the documents is admissible. In case (b), the written admission is admissible. In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible. In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.”

9. In this case, with respect to each one of the documents sought to be produced, the following are the explanations given, denials made and reasons given by this court.

10. With respect to document no.8, it is a lease agreement between the 5th Defendant and the Plaintiff dated 19.8.2005. According to the Applicant, the original as well as the certified copy could not be traced. It had been stated that the certified copies of other agreements entered into between the other Defendants and the Plaintiff are available. Consequently, permission is sought

to file the xerox copies. With respect to this explanation, the Respondents have stated that the said document is a fabricated one. It had been stated that the suit Films in S.Nos.30 and 31 had been produced by Sri Thenandal Films, who had assigned the entire video rights to M/s.Digital War, a partnership firm. The assignment agreement is dated 18.7.2007. With respect to Film in S.No.31, it had been stated that by agreement dated 11.7.2003, video rights have been granted in favour of the 1st Respondent. It had been stated that the plaint document no.8, is a fabricated document. In this connection, if the Respondent stated that the document is fabricated, then evidence will have to be let in on both sides to establish the genuineness and the falseness. For that purpose, the document has to come on record. It is seen from the averment in the plaint that this is an agreement entered into between the 5th Defendant and the Plaintiff. Consequently, the 5th Defendant will also have to state whether the agreement is false. This is a matter to be examined during the trial. Consequently, I hold that the Plaintiff cannot be denied of an opportunity of producing the document merely because it is a xerox copy.

11. With respect to document nos.11 and 12, the Applicant had stated that they had produced the originals before the High Court of Delhi, in CS(OS)No.1625 of 2007, wherein the Applicant is a Defendant. In relation to the averment, it is seen that document no.11 is a copy of the order passed by the High Court of Delhi in IA.Nos.10052 and 10722 of 2007 in CS(OS)No.1625 of 2007 and the document no.12 is the order passed by this court in OA.No.862 of 2008 in Cs.No.747 of 2008. The production of the xerox copies cannot be held against the Applicant because if he ever produces a fabricated order of a court

of law, then the Applicant will have to face severe consequences. Consequently, these documents can be taken on record subject to the evidence let in by the parties regarding non availability of the original and the acceptability of the xerox copy.

12. With respect to document no.13, it is the stand of the Applicant that he had handed over the original to the CBCID, Video Piracy Cell, during the raid conducted on 8.1.2013. The Respondent, on the other hand, with respect to this averment, has stated that the said bill does not disclose purchase of any CDs from Velu Electronics. It had been stated that the allegation that the original bill had been handed over to CBCID during the raid on 8.1.2013 is the self-serving statement. Again the onus is on the Applicant to satisfy during the evidence that the original has actually been handed over to the CBCID. The documents, therefore, as mentioned above, can be taken on record, however, subject to admissibility, proof, relevancy and genuineness and subject to opportunity being granted to both sides to adduce evidence and rebuttal evidence with respect to each of the above issues.

13. The locus of the witness to speak about the documents will have to be treated only after evidence is recorded.

14. For the reasons stated above, this application allowed as prayed for.

27.01.2017

Srcm

C.V.KARTHIKEYAN, J.

Srcm

Pre Delivery Order in
A.No.6489 of 2016 in
CS.No.830 of 2009

27.01.2017

<http://www.judis.nic.in>