

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1939 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order, dated 21-03-2017 passed in I.A.No.440 of 2017 in S.O.P.No.328 of 2016 by the XII Additional Chief Judge, City Civil Court, Secunderabad, dismissing the application filed under Section 63 (2) of the Indian Evidence Act, 1872 (for short 'the Act'), to permit the petitioner to adduce secondary evidence.

2. The petitioner filed S.O.P.No.328 of 2016 to declare the impugned notice, dated 29-07-2016 as illegal, arbitrary and contrary to law and grant permanent injunction restraining the respondents from discharging his duties as President of 8th respondent till the completion of his term i.e., by 25-07-2017 claiming that he is the President of 8th respondent having been elected for the term which would expire by 25-07-2017.

3. The above interlocutory application is filed requesting the Court to receive photocopy of election results declared by Sri E.Vinod and Sri Balesh, Advocates and the photocopy of resolution passed by managing committee as secondary evidence, stating that the said photocopies were exhibited in interlocutory application and that the said documents were not exhibited in his evidence as they are photocopies and that the photocopies are obtained by mechanical process, accurate to the copies compared from the original.

4. The respondent filed counter denying material allegations made in the petition *inter alia* contending that the photocopies are inadmissible in evidence and unless there is

foundational evidence, the Court cannot permit the parties to adduce secondary evidence in terms of Section 65 (c) of the Act and prayed for dismissal of the application.

5. The trial Court after hearing the argument of both counsel, concluded that the petitioner failed to satisfy the conditions required under Section 65 of the Act and declined to permit him to adduce secondary evidence having found no merits in the contention. Hence, this revision.

6. During the Course of hearing, learned counsel for the petitioner reiterated the contentions, whereas the learned counsel for the respondents opposed the application on the same grounds, which they urged before the trial Court.

7. As seen from the allegations in the petition, the petitioner claimed various reliefs and filed photocopies of documents annexed to the petition and no photocopy of election result and resolution passed by the managing committee were included in the list of documents and there is no whisper about those documents in the entire petition and they are not relied upon or sued upon by the petitioner.

8. According to Order VII Rule 14 (1) and (2) CPC, where a plaintiff/petitioner sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint. Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is. Therefore, the petition is silent with regard to

compliance of Order VII Rule 14 (1) and (2) CPC and no factual foundation was laid in the petition seeking permission to adduce secondary evidence in terms of Section 65 (c) of the Act. Section 65 of the Act deals with cases in which secondary evidence relating to documents may be given and clause (c) is one of the circumstances under which, the Court permits the parties to adduce secondary evidence. According to clause (c) of Section 65 of the Act, 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. So to claim benefit under clause (c) of Section 65 of the Act, the petitioner has to first prove that the original was destroyed or lost and the same cannot be produced within the reasonable time. Here, there is no whisper in the petition about destruction or loss of the documents i.e., original election result and resolution passed by the managing committee of 8th respondent. Therefore, absolutely there is no foundational evidence to permit the petitioner to adduce secondary evidence by exercising the power under Section 65 (c) of the Act. Apart from that photocopies taken by mechanical process not compared with the original would not fall within the ambit of Section 65 of the Act. In **U. SREE V U.SRINIVAS** ¹, the apex Court in similar circumstances held as follows:

“ The question was whether a Photostat copy of a letter alleged to have been written by the wife to her father could have been admitted as secondary evidence. The High Court observed that mere admission of a document in evidence does not amount to its proof. Therefore, it is the obligation of the court to decide the question of admissibility of a document in secondary evidence before making endorsement thereon. In the facts of the above, the Judge, Family Court did not discuss anything relating to foundational evidence. The High Court has only mentioned that when the letter was summoned and there was a denial,

¹ (2013) 2 SCC 114

the secondary evidence is admissible. Such a view is neither legally sound or in consonance with the pronouncements of the Supreme Court. Hence, the photocopy of the letter was inadmissible in evidence.

9. If the principle laid down in the above decision is applied to the present facts of the case, photocopy would not fall within Section 65 of the Act and thereby, it is inadmissible in evidence. Apart from that, there is no foundational evidence to permit the petitioner more particularly to prove that original was lost or destroyed and similarly the petition is silent with regard to Order VII Rule 14 (1) and (2) CPC. Therefore, the petitioner is disentitled to adduce secondary evidence taking advantage of Section 65 (c) of the Act. The trial Court rightly declined to permit the petitioner to adduce secondary evidence recording its own satisfactory reasons. I find no legal infirmity warranting interference of this Court and consequently, the revision is liable to be dismissed.

10. Accordingly, the Civil Revision Petition is dismissed confirming the order dated 21-03-2017 passed in I.A.No.440 of 2017 in S.O.P.No.328 of 2016 by the XII Additional Chief Judge, City Civil Court, Secunderabad. No order as to costs. Miscellaneous petitions, if any pending, in this revision shall stand closed.

M.SATYANARAYANA MURTHY, J

DATED: 14-07-2017.
Hsd