

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.6506 OF 2017

ORDER:

Heard learned counsel for the revision petitioner, before ordering notice to the respondent/defendant and perused the ground urged in the revision and the impugned order of the lower court dated 13.10.2017, it was the application filed before the lower court under Section 65 of the Evidence Act r/w Section 151 of CPC to receive document No.2.

2. It is the averment that the suit is filed for recovery of amount and the defendant acknowledged the amount through their Auditors by way of Credit Confirmation Letter, dated 18.01.2010, but as per the plaintiff's account copy something more than that is reflecting as outstanding including for payment of interest at 12% as per trade usage and custom. Photostat copy of the same is filed as defendant suppressed the document and plaintiff also issued notice under Order XII Rule 8, dated 16.09.2014, to produce original confirmation letter dated 18.01.2010 signed by Sri A.V.K.S.Prasad, Deputy Director, CFO of the defendant company along with other documents said to be produced by the next date of hearing. Even though defendant received said notice, did not file the document sought for and thereby to receive the copy of the document.

3. The counter is filed by the respondent/defendant denying the said averments and the contention of though

gave the so-called confirmation letter in saying suit is coming for arguments from the evidence of both sides closed and the petition is nothing but to protract the litigation and alleged letter of 18.01.2010 signed by Sri A.V.K.S.Prasad, Deputy director is strongly disputed. The petitioner never took such plea at any point of time and the document in seeking confirmation of balance in the books of account is sufficient to say the same is concocted for suit purpose. No notice issued to lead secondary evidence and the said document cannot be marked as Photostat copy, hence, the petition to receive and mark the same as secondary document does not arise, hence to dismiss.

4. The lower court observed that Section 65(a) of Evidence Act envisages cases in which the secondary evidence relating to documents may be given. It speaks 'it can be given to the existence, condition or contents of a document (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, (b) or of any person out of reach, 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 and ultimately observed that the petition is devoid of merits and liable to be dismissed and in the result, the petition is dismissed.'

5. In fact, the petition is only to receive the document. For receiving the document to be filed by the plaintiff for not filed

with the pleadings, even to say, if at all the original is in the custody of other defendant as contemplated by Order VII Rule 14 of CPC particularly from clause (3) in plaint it has to be stated leave about not stated for any belated production with provision that applies if at all to invoke that too when not confronted with the document the other side when come to witness box by cross-examination even by invoking Order VII Rule 14 clause (4), thereby the lower court is right in saying what is the scope of Section 65A r/w 66 of Evidence Act and how the petition under that provision to receive the document can be filed.

6. Having regard to the above, there is nothing to interfere with the order of the lower court but for left open to the petitioner if at all to file any petition to receive the document to invoke correct provision and file. Needless to say, the other argument raised is only leave of the court sought for secondary evidence that is not the prayer as referred supra. Even otherwise, there is no provision for the court to accord leave that is also rightly observed by the lower court though not in so many words by referring to Section 65 of Evidence Act, for it is only whether the party is able to show the foundation required by the provision, the party can lead secondary evidence not otherwise. No doubt, as held in ***Bipin Shantial Panchal Vs. State of Gujarat and another***¹, if at all any document including of proof and admissibility and relevancy raised, the court can differ and decide at the final

¹ AIR 2001 SC 1158

stage, while marking subject to objection if objection raised. Further in ***R.V.E.Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple & Another***², the supreme court categorically observed that once a document as secondary evidence without objection marked, the party who can raise objection is deemed waived such petition on the procedural aspect to say the document marked is as good as original to appreciate, but for any other requirements of proof and relevancy. So far as the admissibility and requirement of seeking relevancy with admissibility is contemplated by section 136 Evidence Act and proof is from the nature of the document as per other provisions of the Evidence Act.

7. Having regard to the above, such a contention is also with no force to consider leave about that is not the issue before the court to further observe. Thus, if at all any documents receive petition to file, it shall be under Order VII Rule 14 CPC.

8. Accordingly and with the above observation, this civil revision petition is dismissed. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

DR.B.SIVA SANKARA RAO, J

24.11.2017

SS

² (2003) 8 SCC 752