

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 8252 OF 2016****J.N.Ravnus (India) Private Limited****..... Petitioner****VERSUS****Sanghavi Writing Industries Ltd.****..... Respondent**

Ms.Lopa Munim, i/b. Kusumakar Kaushik for the Petitioner.

Mr.Suryajeet Chavan for the Respondent.

CORAM : R.D. DHANUKA, J.**DATE : 11th SEPTEMBER, 2018****P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 18th November, 2015 passed by the learned trial judge dismissing the notice of motion filed by the defendants seeking permission to lead secondary evidence in respect of the fax message addressed by M/s.Makzan-Al-Maktab to the defendant. The notice of motion is dismissed by the learned City Civil Court Judge on the ground that the petitioner has not complied with the requirements under section 65 of the Indian Evidence Act. The learned trial judge has referred to section 65 of the Indian Evidence Act in the impugned order.

2. Ms. Munim, learned counsel for the petitioner invited my attention to the affidavit in support of the notice of motion and in particular paragraph (7) in support of the submission that the petitioner has laid foundation and has specifically mentioned in the affidavit that

the photocopy was prepared from the original by the defendant by way of mechanical process and was the accurate copy of the original.

3. This court in the judgment delivered on 3rd November, 2017 in case of ***Karthik Gangadhar Bhat vs. Nirmala Namdeo Wagh & Anr.*** in Writ Petition No. 11151 of 2017 has held that the result of disallowing the application is even more serious because the evidence in question is wholly excluded from consideration without the slight examination of the proposed secondary evidence. It is held by this court that the application for seeking permission to lead secondary evidence is not even necessary.

4. In my view, the impugned order passed by the learned trial judge is *ex-facie* contrary to the provisions of section 65 of the Indian Evidence Act and contrary to the averments made in the paragraphs of the affidavit in support of the notice of motion and thus deserves to be set aside.

5. I, therefore, pass the following order :-

(a) Impugned order dated 18th November, 2015 passed by the learned trial judge in Notice of Motion No. 2919 of 2015 is quashed and set aside.

(b) Notice of Motion No. 2919 of 2015 for seeking secondary evidence is allowed.

(c) The petitioner would be at liberty to lead secondary evidence and file additional affidavit of evidence in line with the averments in the paragraphs in the affidavit in support of the notice of motion.

6. Writ petition is allowed in the aforesaid terms. No order as to costs.

7. Hearing of the suit is expedited.

[R.D. DHANUKA, J.]