

Mr. Tushar Dahibawkar i/b. Dahibawkar and Co. for Petitioner.
Mr. Mayur Khandeparkar a/w. Mr. Sameer Singh, Mr. Harsh B. Buch,
ALML Legal for Respondent No.2.

P.C. :

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 22.11.2017 passed by the learned Judge, Court Room No.13 of the Court of Small Causes at Bombay below exhibit-96 in R.A.E. Suit No.1028/1534 of 2010. By that order, the learned trial Judge rejected the affidavit exhibit-96 filed on behalf of the defendants under Section 65-B of the Indian Evidence Act, 1872 (for short 'Act'). The learned trial Judge rejected the affidavit principally on the ground that defendant failed to explain as to the specification of the person having lawful control over the official use of the computer. In short, no name of the said person having lawful control over the official use of the computer was disclosed by the defendant. Likewise, who was using the computer and who was carrying out the official activities is nowhere put forth by the defendant.

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the Act.

4. Mr. Khandeparkar relied upon the decision of the Apex Court in the case of ***Anvar P. V. Vs. P. K. Basheer*, (2014) 10 SCC 473**, and in particular paragraphs 14, 16 and 21 thereof. In paragraph 14, the Apex Court observed that notwithstanding anything contained in the Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original. He submitted that unless and until, the conditions stipulated in sub-clause (2) of Section 65-B are satisfied, the materials sought to be produced cannot be treated as a document. In paragraph 16, the Apex Court observed that certificate contemplated by Section 65-B must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), Pen Drive, etc. pertaining to which a statement is sought to be produced in evidence. In paragraph 21, after reproducing paragraph 150 of *State (NCT of Delhi) Vs. Navjot Sandhu @ Afsan Guru*, (2005) 11 SCC 600, the Apex Court observed that it was a case where a responsible official had duly certified the document at the time of production itself. In the light of these paragraphs, he submitted that no interference is called for as at the time of filing of document itself, it was not in conformity with Section 65-B of the Act.

5. On the motion made by Mr. Dahibawkar, Petition is allowed to be withdrawn with liberty as prayed for. Grant of liberty shall not be construed as an expression of merits either way. All contentions of the parties, including the contentions of the respondent No.2 recorded herein, are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)