

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP. No. 3408 of 2018

ORDER:

This Revision is filed assailing the order dt.16.03.2018 in I.A.No.239 of 2017 in O.S.No.3068 of 2015 of the II Junior Civil Judge, City Civil Court, Hyderabad.

2. Petitioner herein is the plaintiff in the above suit. He filed the said suit for recovery of money and damages against the respondent, who was a former employee of the petitioner.

3. After written statement was filed by the respondent and trial commenced, petitioner filed affidavit in lieu of Chief-examination of PW1 and sought permission of the Court under Section 65/65B of the Evidence Act, 1872 (for short 'the Act') to mark photo copies of the following documents:

Sl.No.	Date	Description.
1.	--	Offer Letter
2.	19.05.2014	Employee Commitment Agreement.
3.	19.05.2014	Letter Acknowledging the receipt of the original certificates
4.	17.06.2015	Letter sent by the plaintiff to the defendant
5.	18.06.2015	Postal Receipt
6.	19.06.2015	Email from the defendant to the plaintiff
7.	--	Email conversations between plaintiff and defendant
8.	24.08.2015	Legal Notice.

4. According to him, these documents are conversations between the petitioner and respondent during the course of employment and the respondent did not deny or dispute about the existence of these documents, though they were mentioned in the plaint. It is stated that the originals of the said documents are not available as original Offer Letter was given to the respondent and other documents are clubbed with the records of the company and the same are not traceable. Reference is also made to certain e-mails which are covered by the Information Technology Act, 2000. It is stated that all these documents are relevant for the purpose of adjudication of the dispute between the parties in a fair and proper manner.

5. No counter was filed by the respondent opposing the said application, but the Court below dismissed the said application on 16.03.2018.

6. The Court below noted that though original offer letter was not available with the petitioner and was with the respondent, petitioner can file office copy of the letter. It also observed that some of the other documents are stated to be misplaced in office files and under Section 65(C) of the Act it has to be shown that the same was not arising from the default or neglect of the petitioner. It observed that suit was

filed in 2015 and petitioner had not filed the application within reasonable time and had acted negligently. It also stated that e-mail conversations between the petitioner and respondent must be filed along with Section 65B Certificate, but petitioner did not do so.

7. Assailing the same, this Revision is filed.

8. Counsel for petitioner contends that when the original Offer Letter is in the custody of the respondent, who was a former employee of the petitioner, the Court cannot refuse permission to produce photocopy of the same.

9. Counsel for the respondent on the other hand states that no notice to the respondent had been given by the petitioner under Section 66 of the Act, and that without giving such notice, petitioner cannot seek to produce secondary evidence of the original Offer Letter.

10. The Court below however did not give the above reasons but stated that if the original Offer Letter is with the respondent, petitioner can file office copy of the letter. This stand of the Court below cannot be sustained.

11. Therefore, subject to the petitioner serving notice under Section 66 of the Act on the respondent to produce the

original Offer Letter issued to him by the petitioner, the photo copy of the original Offer Letter may be received in evidence by the Court below, if the respondent does not produce the original Offer Letter given to him by the petitioner.

12. As regards the other documents which are said to be not traceable or available with the petitioner, though counsel for the respondent sought to contend that it is for the petitioner to establish that they are destroyed or lost, since they are not available/not traceable, photo copies of the said documents may be received in evidence, particularly, when their existence is not denied by the respondent by filing a counter affidavit.

13. As regards e-mail conversations sought to be relied upon by the petitioner, subject to the petitioner complying with Section 65B of the Act, they may be received in evidence, subject to proof and relevance.

14. Accordingly, the Civil Revision Petition is allowed; and the order dt.16.03.2018 in I.A.No.239 of 2017 in O.S.No.3068 of 2015 of the II Junior Civil Judge, City Civil Court, Hyderabad is set aside and the said I.A., is allowed as above. No order as to costs.

15. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

19th March, 2019.

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