



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.(MD)No.6900 of 2019

and

W.M.P(MD) No.5497 of 2019

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The General Manager,
The Nicholson Town Co-op Bank Ltd.,
No.38/5, Raja Complex,
No.120, East Main Street,
Thanjavur District.

... Petitioner

Vs.

N.Gurunathan

... Respondent

PRAYER : This Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the Labour Court, Kumbakonam in I.A.No.1/19 in I.D.No.13/18 dated 21.02.2019 and to quash the same and consequently allow the above petition.

For Petitioner : Mr.H.Arumugam

For Respondent : No representation

ORDER

This writ petition has been filed to quash the impugned order passed by the Labour Court, Kumbakonam in I.A.No.1/19 in I.D.No.13/18 dated 21.02.2019, wherein the Labour Court was pleased to pass an order of rejection of the petitioner's application for marking two documents as secondary evidence, namely, the photo copy of the loan application in respect of Account No.26822 dated 13.01.2013 and the photo copy of the undertaking letter given by the respondent and Smt.M.Vijayalakshmi in favour of the Bank on 15.03.2014.

2.Though the notice has been served on the respondent, none appeared on behalf of the respondent. Therefore, this Court is proceeded to hear the matter in his absence.



3.It is the contention of the petitioner is that originally the petitioner was not able to produce the above original two documents before the Labour Court to be marked as primary evidence, since the same were misplaced by his Lawyer. Hence, the Lawyer filed an affidavit stating that the said documents were handed over to him by the petitioner and it was misplaced in his office. Narrating the above facts the petitioner filed an application along with the copy of the above two documents before the Labour Court. The said application was rejected by the Labour Court for non-production of the original documents.

4.It is the further contention of the petitioner that the photocopy of the documents can be marked as secondary evidence. Mere production of document is not admission and it requires to be proved. Therefore, without considering all these aspects, the Labour Court has rejected the application contrary to the law settled by the Hon'ble Apex Court in **Rakesh Mohindar's case** on the provision of Sections 63 and 65 of Evidence Act.

5.Heard the learned counsel appearing for the petitioner and perused the materials available on record.

6.The issue to be decided in the present case is whether the photocopy of the above two documents filed by the petitioner before the Labour Court can be marked as secondary evidence. In this regard, the case of Rakesh Mohindra Vs Anita Beri and other reported in 2016(1)MWN (Civil) 105 has been relied on by the petitioner, wherein the Hon'ble Apex Court has held as follows:-

15. As a general rule, documents are proved by leading primary evidence. Section 64 of the Evidence Act provides that documents must be proved by the primary evidence except in cases mention in Section 65 of the Evidence Act. In the absence of primary evidence, documents can be proved by secondary evidence as contemplated under Section 63 of the Act which reads as under: -

"Secondary evidence means and includes- (1) certified copies given under the provisions hereinafter contained; (2) Copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies.

(3) copies made from or compared with the original ;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a documents given by some person who has himself seen it.

Illustration:



(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine copy of the original, is secondary evidence of the original."

16. Section 65 of the Act deals with the circumstances under which secondary evidence relating to documents may be given to prove the existence, condition or contents of the documents. For better appreciation Section 65 of the Act is quoted herein below:-

"65. Cases in which secondary evidence relating to documents may be given: Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:-

(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, or of any person out of reach of, 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;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) 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;

(d) when the original is of such a nature as not to be easily movable;



who marked as secondary evidence, has to prove that the document has been misplaced. In order to prove that the documents have been misplaced, the petitioner produced the affidavit of the Lawyer who had misplaced the documents in his office.

8. This Court is of the opinion that the production of the affidavit of the Lawyer, who misplaced the document, is sufficient to establish the fact of misplacement of the documents for the purpose of marking a photocopy of the documents as secondary evidence before the Labour Court. In such view, I do not find any merits in the order passed by the Labour Court dated 21.02.2019.

9. In the light of the above discussion, this Writ Petition is allowed and the impugned order passed by the Labour Court, Kumbakonam in I.A.No.1/19 in I.D.No.13/18 dated 21.02.2019 is set aside. The petitioner is permitted to mark the copy of the two documents namely, photo copy of the loan application in respect of Account No.26822 dated 13.01.2013 and the photo copy of the undertaking letter given by the respondent in favour of the petitioner Bank on 15.03.2014 as secondary evidence. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P & A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:-

The Labour Court,
Kumbakonam

+1cc to Mr.H.ARUMUGAM, Advocate, SR NO.26928

+1cc to Mr.S.SAJI BINO ,Advocate, SR No.27145

W.P. (MD)No.6900 of 2019
and

W.M.P (MD) No.5497 of 2019
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SMV (CO)

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