

AD. 12.
August 5, 2021.
MNS.

C. O. No. 1312 of 2020
(**Via video conference**)

Goutam Pramanick
Vs.
Niran Naskar and others

Mr. Sanjoy Mukherjee

... for the petitioner.

Mr. Prosenjit Mukherjee,
Mr. Tirthankar Mukherjee,
Ms. Madhurima Sarkar,
Mr. Saptarshi Chakraborty,
Mr. Munshi Ashiq Elahi

...for the opposite parties.

Learned counsel for the petitioner contends that the trial court acted without jurisdiction in refusing the petitioner's prayer for marking certain documents as exhibits.

In the present case, initially a witness-recall application was filed and allowed. Thereafter, the opposite parties made an application for a direction on the petitioner to produce certain documents, copies of which were annexed to the plaint, but allegedly not handed over to the opposite parties. Upon such application being made, the petitioner handed

over photocopies of the said documents (which were certain title deeds) to the opposite parties.

Subsequently, the petitioner applied for such original documents, photocopies of which were handed over, to be marked as exhibits in consonance of Section 163 of the Indian Evidence Act, 1872 (in short 1872 Act).

Learned counsel argues that, as per Section 163, when a party calls for a document and the same has been given to and inspected by the said party after production of the same, the party initially seeking for production of the document is bound to give it as evidence if the party producing it requires him to do so.

Learned counsel further places reliance on the language of Section 66 of the 1872 Act, which relates to the rules as to notice to produce. As per the said provision, it is contended, secondary evidence of the contents of the documents referred to in Section 65(a) of the Act, that is, primary evidence, shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the documents is, or to his attorney or pleader, such notice to produce it as is prescribed by law. If no notice is prescribed by

law, then such notice, the section further provides, as the court considers reasonable under the circumstances of the case shall have to be given.

It is argued by the petitioner that, read in conjunction, Sections 66 and 163 of the 1872 Act mandate that the documents asked for and produced for inspection by the parties between themselves, are compulsorily to be marked as exhibits.

Learned counsel appearing for the opposite parties controverts such contentions and submits that when the previous application for recall of witnesses was made by the petitioner, the documents had not yet been sought to be marked as exhibits. That apart, it is argued that the provisions of Section 163 is not applicable to the present case, since photocopies of such documents, which were purportedly annexed to the plaint, were not handed over, along with the copy of the plaint, to the opposite parties.

Upon hearing learned counsel for both sides, it is evident that Section 163 of the 1872 Act, as well as Section 66 thereof connote the originals of documents by the expression 'documents', as used in the said sections. It

would be an absurd proposition, in the event a party calls for a photocopy of a document, which is produced and inspected and subsequently the said photocopy is marked as evidence, since the 1872 Act has to be read as a whole and there is no provision for photocopies to be directly marked as exhibits unless the rigours of Section 66 are complied with.

In the present case, there was no such notice to produce as envisaged in Section 66, since the said provision stipulates that secondary evidence of the contents of the originals would not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, such notice to produce.

The said provisions are not applicable in the instant case, since the opposite parties, in the first place, did not seek production or inspection of the originals, but merely asked for production of the photocopies annexed to the plaint, which were allegedly not served on them.

In any event, since photocopies of the documents were annexed to the plaint, the opposite parties were entitled to such copies

irrespective of the provisions of Sections 162 and 163 of the 1872 Act.

Moreover, the expression 'documents', used twice in Section 163, cannot be attributed different meanings, since such attribution would lead to an improbable result.

It has to be noticed that Section 163 clearly refers to original documents being called for production and inspection of such documents, upon which the original documents can be marked as evidence. In the present case, there was no notice to produce the original documents at any point of time, sufficient to attract the provisions of Section 163.

Hence, the contentions of the petitioner regarding the applicability of Section 163 of the 1872 Act cannot be accepted.

However, when the previous application for recall of witness was filed and allowed, the application for production of the current photocopies had not been made. Since the said application and subsequent production and inspection of photocopies were subsequent developments, there is no bar to preclude the petitioner from applying to the trial court afresh with a prayer for recall of the relevant witnesses

for the purpose of marking the originals of the documents-in-question as exhibits.

If such an application is made, the trial court shall decide the same independently on its own merits upon hearing both sides, without being influenced by any of the observations made herein.

C. O. No. 1312 of 2020 is disposed of in the light of the above observations without interfering with the impugned order.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)