

\$~A-6(2019)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 13th December, 2021

+ C.R.P. 155/2019 & CM APPL. 31926/2019

NAMITA VERMA & ORS

..... Petitioners

Through: Ms. Aniruddha Deshmukh and Mr.
Shaurya Kuthiala, Advocates.
(M:8376011490)

versus

MOMMAN KHAN & ORS

..... Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.
2. The present petition challenges the impugned order dated 10th April, 2019 by which the Trial Court in **CS No.8953/16** titled **Namit Verma & Ors. v. Momman Khan & Ors.** has directed the production of original documents in the application under Order XIII Rule 1 CPC filed by the Plaintiffs/Petitioners (*hereinafter "Plaintiffs"*). The Plaintiffs herein had sought permission merely for dispensation of the requirement to file original documents on record. The Plaintiffs instead sought directions to produce the relevant original documents in Court, for the Defendants to inspect the same at a convenient date, in terms of the judgment of the Id. Single Judge of this Court in **Aktiebolaget Volvo and Ors. v. R. Venkatachalam and Ors., 160 (2009) DLT 100**. The relevant extract of the said decision is as under:

"12. The CPC in Order 13 Rule 1 for the first time provides for the parties to "produce" before the settlement of issues "all the documentary/evidence in original where the copies thereof have been filed along

with the plaint or written statement.

A reading thereof shows that the reference to the documents in the earlier provisions noticed above is not necessarily to original documents and the documents referred to in the earlier provisions could be copies.

Xxx

13. Thus reference in CPC to documents, except in Order 13 Rule 1 is not necessarily to the original documents and includes copies within the document. Thus the contention of the Counsel for the defendant of Order 7 Rule 14 or Order 8 Rule 1A of the CPC requiring originals to be filed is not found to be correct.

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23. When at the stage of proof of documents, the requirement under Section 62 of the Evidence Act is only of production of original for inspection of the court, Order 13 Rule 1 of the CPC requiring production of originals has to be necessarily meant as production of original for inspection of the court and not as filing of the original. Significantly, Order 13 Rule 1 also uses both expressions "produce" in connection with original and "filed" in connection with the copies. The different expression used, together with definition/meaning of produce cited by Counsel for plaintiffs also lend me to hold that the original documents are only intended to be produced i.e. to be given inspection of while the copies are to be filed.

24. I, therefore, find that the scheme of the aforesaid legislative provisions also permits production of originals for inspection only and filing of copies only.

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26. The aforesaid should not be understood as laying down that in all cases the filing of photocopies is enough. If the document is doubtful or for any other reason required by the court to remain in original on the file of the court, the court can always direct so and

a party cannot insist on filing of copy only. There may be other instances where filing of the original is necessary, as in the case of documents like Will, Agreements which may be terminated/cancelled by destruction. The courts can in such cases insist upon the original being filed on the record.”

3. The above position is also reiterated in the Delhi High Court (Original Side) Rules, 2018 (*hereinafter “2018 Rules”*) which exempts parties from *filing* original documents. It is sufficient if the same are produced for inspection. The relevant rules are Rules 2 and 3 of Chapter VII of the 2018 Rules, which read as under:

“CHAPTER VII

**APPEARANCE BY DEFENDANT, WRITTEN
STATEMENT, SET OFF AND COUNTER-CLAIM**

XXX

2. Procedure when defendant appears.—If the defendant appears personally or through an Advocate before or on the day fixed for his appearance in the writ of summons:—

(i) where the summons is for appearance and for filing written statement, the written statement shall not be taken on record, unless filed within 30 days of the date of such service or within the time provided by these Rules, the Code or the Commercial Courts Act, as applicable. An advance copy of the written statement, together with legible copies of all documents in possession and power of defendant, shall be served on plaintiff, and the written statement together with said documents shall not be accepted by the Registry, unless it contains an endorsement of service signed by such party or his Advocate.

(ii) the Registrar shall mark the documents produced by parties for purpose of identification, and after comparing the copies with their respective originals, if

they are found correct, certify them to be so and return the original(s) to the concerned party.

3. Affidavit of admission/ denial of documents alongwith written statement. – Alongwith the written statement, defendant shall also file an affidavit of admission/ denial of documents filed by the plaintiff, without which the written statement shall not be taken on record. Alongwith the written statement, the defendant shall be entitled to file applications for interrogatories for examination of the plaintiff together with proposed interrogatories; application for discovery; and application for inspection of such documents.”

Thus, filing of original documents is no longer required even as per the 2018 Rules.

4. In the present case, on 12th September, 2019, notice was issued in the present petition in the presence of counsel for the Respondents/Defendants (hereinafter “Defendants”). None has appeared on behalf of the Defendants on 11th February, 2020, 6th January, 2021 and 21st October, 2021. In the meantime, Mr. Deshmukh, Id. Counsel for the Plaintiffs submits that the Defendants have already been proceeded against *ex-parte* before the Trial Court vide order dated 12th November, 2021.

5. In view of the said subsequent events, the issue concerning production/filing of the original documents would no longer arise as the Defendants have been proceeded against *ex-parte*.

6. It is, however, made clear that if at any point of time, the Defendants join the proceedings, it would be sufficient, in terms of the judgment in *Aktiebolaget Volvo (supra)* as also the 2018 Rules, for the Plaintiffs to produce the original documents for inspection thereof rather than filing the original documents.

7. With these observations, the petition is disposed of. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

DECEMBER 13, 2021/dk/Ak

