

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 15064 OF 2022

Ved Prakash Ahuja

Aged 88 Years, Occupation:Service

residing at Kaasgrabengasse 7,

1190, Vienna, Austria.

And Flat No.316, Samudra Mahal Premises

Co-Op.Soc. Ltd., Dr. Annie Besant Road,

Worli, Mumbai-400 018.

... Petitioner

Vs.

1. Roma Prakash Ahuja

Aged 72 years, Occupation Non Known

2. Varun Prakash Ahuja,

Aged 38 years, Occupation : Business

3. Abhay Prakash Ahuja,

Aged 37 Years, Occupation : Business.

All residing at Flat No. 316, Samudra Mahal

Premises Co-op.Soc. Ltd, Dr. Annie Besant

Road, Worli, Mumbai- 400 018.

... Respondents

Mr. Karl Tamboli, with Mr. Hrushi Narvekar, Ms. Shaheda Madraswala and
Ms. Jeniffer Morgrelia i/b Vashi & Vashi for Petitioner.

Ms. Uroosa Shaikh i/b Mr. Kunal Bhanage for Respondent No.3.

CORAM: ABHAY AHUJA J.

DATE : 14 JUNE 2023

JUDGMENT :

1. Rule. Rule is made returnable forthwith. By consent of the learned
Counsel for the parties, writ petition is heard finally.

2. By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 30 April 2022 passed by the Small Causes Court, Mumbai below Exh. 453 in L.E. Suit No. 71/85 of 2012 (the “said suit”), rejecting the said application being Exh. 453 made by the Petitioner for calling upon the Income Tax Department to provide a proper certificate / letter in support of the Income Tax records of late Prakash Ahuja, the late husband and father of the Respondents and on receiving such certificate mark the documents under the list at Exh. 313 being the Income Tax records of late Shri Prakash Ahuja in evidence.

3. Mr. Karl Tamboli, learned Counsel for the Petitioner draws the attention of this Court to the application under Exh. 453 and submits that this application was necessitated in as much as the Trial Court by an order dated 13 January 2022, while marking the Income Tax records of the Respondents No. 1 to 3 filed below letter at Exhs. 345, 441 and 442 in evidence, refused to do so with respect to the Income Tax records of late Shri Prakash Ahuja being the documents below list at Exh. 313 as it was observed that the photocopies of the Income Tax records were without a certificate from the Income Tax Department.

4. Learned Counsel for the Petitioner would submit that in view of the decision of the Hon'ble Supreme Court in the case of *Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and Ors.*¹, when documents are produced by authorities, in order to ensure the source and authenticity of the said documents, it is not only mandatory to obtain a certificate under Section 65-B (4) of the Indian Evidence Act, 1872, but despite efforts, if the person seeking such a certificate is unable to do so, he can apply to the Court for its production and the judge conducting the trial must summon the persons referred to in Section 65-B(4) of the Evidence Act and require that such certificate be given by such person/persons. Drawing attention to paragraph 4 of the said application, learned Counsel would submit that despite all efforts made by the Petitioner to procure the certificate under Section 65-B of the Evidence Act, left with no choice the Petitioner preferred the application under Exh. 453, which has been rejected by the Trial Court *inter alia* on the ground that the Petitioner had neither moved an application on his own account for getting the certificate directly from the concerned department, nor filed an application before the Court for issuance of directions to the concerned department for submitting the certificate before passing an order of admissibility of documents filed

1 (2020) 7 SCC 1

below list Exh.313. Learned Counsel would submit that this finding itself *ex-facie* exhibits complete non application of mind on the part of the Trial Court. It is submitted that pursuant to an application seeking issuance of witness summons to the Income Tax Department to produce Income Tax and Wealth Tax Return of late Mr. Prakash Ahuja from the year 1972 to 2005 and of the Respondents No. 1 to 3 from the year 2005 till the date of the application, the Trial Court had issued witness summons to the Principal Commissioner of Income Tax-21, to depute an authorised person to produce the said document, however, the Income Tax Officer-1(2)(1), who was deployed by the Income Tax Department to produce copies of the Income Tax records of late Mr. Prakash Ahuja before the Trial Court, failed to provide the certification from the Income Tax Department along with the said documents certifying the same. And even though the prayer clause in the application under Exh. 453 clearly makes a prayer to the Trial Court to call upon the Income Tax Department to provide a proper certificate/letter in support of the Income Tax records of late Mr. Prakash Ahuja, the Trial Court has clearly erred in giving the finding that the Plaintiff has neither moved the concerned department nor filed an application before the Court for directing the concerned department for submitting the certificate. With respect to the finding of the Trial Court

that Section 65-B does not speak about the stage at which such a certificate must be produced to the Court, learned Counsel would submit that the decision of the Hon'ble Supreme Court in the case of *Arjun Panditrao Khotkar (supra)* clearly addresses this issue in paragraph 52, when it says that Section 65-B does not speak of the stage at which such certificate must be furnished to the Court. Learned Counsel would submit that clearly the finding of the Trial Court is erroneous and deserves to be quashed and set aside and the direction be given to the Trial Court to call upon the Income Tax Department to provide a proper certificate / letter in support of the tax records of late Mr. Prakash Ahuja and on receiving such certificate mark list at Exh. 313 in evidence.

5. On the other hand, Mr. Kunal Bhanage, learned Counsel for the Respondents would submit that the Petition cannot be allowed in as much as the Petitioners have not challenged the order dated 13 January 2022, pursuant to which the Trial Court has not allowed documents filed below list Exh. 313 to be exhibited in evidence. Learned Counsel for the Respondents relies upon the reply affidavit filed in application under Exh. 453 and submits that the said application is in effect seeking a review of the order dated 13 January 2022, pursuant to which the Trial Court has

directed that the said documents not be exhibited, which cannot be permitted as the Petitioner has not established any case to review the said order dated 13 January 2022 and therefore, the application for review is not maintainable.

6. Learned Counsel for the Respondents further submits that the Petitioner never demanded or insisted the issuance of the certificate under Section 65-B in respect of the said documents and that the said prayer has been made not only belatedly but as an after thought, particularly when the Petitioner has not challenged the order dated 13 January 2022. Learned Counsel would submit that when the documents were produced on 20 February 2019 or subsequently the Petitioner should have prayed for the Income Tax Department to provide a proper certificate/letter and cannot now do the same. Learned Counsel would submit that the said application has been filed to cover up Petitioner's lapses in the evidence and that the said application is in abuse of the process of law and therefore, the Petition deserves to be dismissed.

7. I have heard Mr. Karl Tamboli, learned Counsel for the Petitioner and Mr. Kunal Bhanage, learned Counsel for the Respondents and with

their able assistance I have perused the papers and proceedings and considered the rival contentions.

8. Petitioner claims to be the owner of flat no. 316 admeasuring 1702 sq. ft on the 16th Floor along with one cover car parking space no. 16 in Samudra Mahal Premises Co-operative Society Limited at Dr. Annie Besant Road, Worli, Mumbai-400 018, being part of Cadastral Survey No.2 of Worli Division in the Registration District and Sub-District of Bombay (the “said premises”) and has filed the L.E. Suit No. 85/2012 for ejectment of the Respondents, who respectively are the wife and children of his late brother Prakash Ahuja, stating that the Petitioner is the sole owner of the said premises and Prakash Ahuja was Petitioner’s gratuitous licensee in respect of the said premises. It is also submitted that it was always the understanding between Prakash Ahuja and the Petitioner that possession of the said premises would be handed over to the Petitioner as and when required by him. It has been further submitted that however after a few years after the demise of Prakash Ahuja, the Petitioner requested the Respondents to hand over possession of the said premises to him, but the Respondents refused to do so and claimed that the said premises was gifted to Prakash Ahuja by way of an oral family arrangement entered into

between the Petitioner and Prakash Ahuja. According to the Petitioner, this stand of the Respondents without any evidence has necessitated the filing of the eviction suit before the Small Causes Court at Mumbai. That during the course of the first Respondent's cross-examination, the Petitioner had issued a notice dated 31 July 2018 calling upon the Respondents to produce Income Tax Returns of Prakash Ahuja among other documents, however, when despite best efforts, no such documents came to be produced by the Respondents, the Petitioner filed an application under Exh 291 on 20 December 2018 for issuance of witness summons upon the Commissioner of Income Tax to produce the Income Tax records of Prakash Ahuja and the Respondents and by an order dated 8 February 2019, the Trial Court issued summons to the Principal Commissioner of Income Tax-21 to depute an authorised person to produce the documents of Prakash Ahuja and the Respondents. Pursuant to the said order, on 28 February 2019, the Income Tax Department appointed an officer being Income Tax Officer-1(2)(1), who produced the copies of the Income and Wealth Tax Returns of Prakash Ahuja as well as the Respondents and the said documents were filed on record along with the Income Tax Officer's covering letters exhibited as 313, 345, 441 and 442 respectively. By order dated 13 January 2022, the Trial Court passed

an order exhibiting the letters at Exh. 345 (Income Tax records of Respondent No.1), Exh. 441 (Income Tax records of Respondent No.2) and Exh. 442 (Income Tax records of Respondent No.3) but directed that the documents filed below list Exh. 313 being photocopies without certificate under Section 65-B will not be exhibited. Paragraph 14 of the said order is usefully quoted as under:-

“14. It is clear from ratio of the authorities of Hon’ble Apex Court cited by the defendants that the certificate under Section 65-B of the Indian Evidence Act, is necessary to ensure the source and authenticity, of the electronic record sought to be used as evidence. In the case in hand, the documents which are produced by the income tax department on record on the basis of summons of the Court are the returns of the defendants which were submitted by the defendants on the portals of the Income Tax Department. On perusal of said letters submitted to the Court for filing of the printout of the returns on record, it cleared that in letter Exh. 345, there is specific certification given in said letter about the print out of the returns. So far as, letter Exh. 441 and 442 are concerned, there is also specifically mentioned that the tax returns attached with the letter are true copies taken from the income tax portal. From the said letters, it has been cleared that the information in the form of returns uploaded on the portal of income tax department by the defendants are taken out by the concerned officers from the said portal and accordingly they have certified the same and thereby the officers of income tax department have ensured the source and authenticity of the said documents. Hence, documents filed below letter Exh. 345, 441 and 442 are liable to be exhibited. The documents filed below list Exh. 313 are the photocopies without certificate, hence, will not be exhibited. Hence, I pass the following order:-

ORDER

- 1. Documents filed below letter Exh. 345 except last three*

pages be exhibited collectively, by putting Nos. 1,2,3...
2. Documents filed below letter Exh. 441 and 442 be exhibited collectively by putting Nos. 1,2,3...
3. Documents filed below list Exh. 313 are not exhibited.”

9. It was observed that the list of documents at Exh. 313 appeared to be a hand written list of documents and the said documents being photocopies in respect of which there was no certification to the said documents by the concerned authority and accordingly, the documents filed below list Exh. 313 were not exhibited.

10. Aggrieved by the said order dated 13 January 2022, whereby the documents filed below list Exh. 313 were directed not to be exhibited, the Petitioner preferred an application under Exh. 453 dated 4 April 2022 for the following reliefs:

“a. be pleased to mark the documents under the list at Exhibit 313, in evidence, without the necessary certificate;

b. in the alternate to prayer clause (a) herein above, be pleased to call upon the Income Tax Department to provide a proper certificate/letter in support of the Income Tax Records of Prakash Ahuja, on receiving such certificate, mark Exhibit 313 in evidence; and

c. any other reliefs this Hon’ble Court deems fit and necessary”

11. By the said application, the Petitioner submitted that although all efforts had been made to procure the certificate under Section 65-B, the same was not available and therefore, the application was being made. The following facts and circumstances in paragraph 4 of the said application, set out the efforts taken by the Petitioner :-

“a. The Plaintiff’s Advocates had issued a notice dated 31 July 2018 at Exh. 219 calling upon the Defendants to produce the Income Tax Returns of Prakash Ahuja, among other documents.

b. However, the Defendants failed to produce the same, despite, Defendant No.1 admitted to having knowledge of the fact that it was one D. M. Harish & Co. who would file Defendant No.1 and Prakash Ahuja’s tax returns.

c. Thereafter, the Plaintiff filed an Application dated 20 December, 2018 Exhib. 291 for issuance of witness summons to the Commissioner of Income Tax Office for production of Income tax Returns of Prakash Ahuja and the Defendants.

d. The Income Tax Officer 1(2) 1 was deployed by the office of the Income Tax department, who produced copies of the Income Tax Records of Prakash Ahuja, before this Hon’ble Court. However, he failed to provide a certification from the Income Tax Department along with the said documents, certifying the same.
.....”

12. The Hon’ble Supreme Court in the case of *Anvar P. V. Vs. P. K. Basheer*² has observed that whenever a person is seeking to rely upon a electronic record, for the same to be produced in the evidence, a

2 (2014) 10 SCC 473

certificate under Section 65-B of the Evidence Act is mandatory. Paragraph

No. 14 in the said case is usefully quoted as under:-

“14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence 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. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions under Section 65-B(2) of the Evidence Act :

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents ; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.”

13. In fact, the Hon'ble Supreme Court in the case of *Arjun Panditrao Khotkar (supra)* in paragraph 51, has clearly held that Section 65-B(4) of the Evidence Act to be mandatory and in paragraph 52 it has held that if a person has done everything possible to obtain the necessary certificate, but has not been able to obtain the same or is refused, then he can make an application to the Trial Court for production and the Trial Court must summon the person and direct that such certificate be given. Paragraphs No. 47, 51 and 52 of the said decision are relevant and are usefully quoted as under:-

*“47. However, a caveat must be entered here. The facts of the present case show that despite all efforts made by the Respondents, both through the High Court and otherwise, to get the requisite certificate under Section 65B(4) of the Evidence Act from the authorities concerned, yet the authorities concerned wilfully refused, on some pretext or the other, to give such certificate. In a fact-circumstance where the requisite certificate has been applied for from the person or the authority concerned, and the person or authority either refuses to give such certificate, or does not reply to such demand, the party asking for such certificate can apply to the court for its production under the provisions aforementioned of the Evidence Act, CPC or Cr.PC. Once such application is made to the court, and the court then orders or directs that the requisite certificate be produced by a person to whom it sends a summons to produce such certificate, the party asking for the certificate has done all that he can possibly do to obtain the requisite certificate. Two Latin maxims become important at this stage. The first is *lex non cogit ad impossibilia* i.e. the law does not demand the impossible, and *impotentia excusat legem* i.e. when there is a disability that makes it impossible to obey the law, the alleged disobedience of the law is excused. This was well put by this Court in *Re: Presidential Poll (1974)* 2 SCC 33 as follows:*

“14. If the completion of election before the expiration of the term is not possible because of the death of the prospective candidate it is apparent that the election has commenced before the expiration of the term but completion before the expiration of the term is rendered impossible by an act beyond the control of human agency. The necessity for completing the election before the expiration of the term is enjoined by the Constitution in public and State interest to see that the governance of the country is not paralysed by non-compliance with the provision that there shall be a President of India.

15. The impossibility of the completion of the election to fill the vacancy in the office of the President before the expiration of the term of office in the case of death of a candidate as may appear from Section 7 of the 1952 Act does not rob Article 62(1) of its mandatory character. The maxim of law impotentia excusat legem is intimately connected with another maxim of law lex non cogit ad impossibilia. Impotentia excusat legem is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform. ‘Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him.’ Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance with the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. It is important to note that the provision in question in Presidential Poll (supra) was also mandatory, which could not be satisfied owing to an act of God, in the facts of that case. These maxims have been applied by this Court in different situations in other election cases – see Chandra Kishore Jha v. Mahavir Prasad and Ors. (1999) 8 SCC 266 (at paragraphs 17 and 21); Special Reference 1 of 2002 (2002) 8 SCC 237 (at paragraphs 130 and 151) and Raj Kumar Yadav v. Samir Kumar Mahaseth and Ors. (2005) 3 SCC 601 (at paragraphs 13 and 14).

51. On an application of the aforesaid maxims to the present case, it is clear that though Section 65-B(4) is mandatory, yet, on the facts of this case, the respondents, having done everything possible to obtain the necessary certificate, which was to be given by a third party over whom the respondents had no control, must be relieved of the mandatory obligation contained in the said sub-section.

52. We may hasten to add that Section 65B does not speak of the stage at which such certificate must be furnished to the Court. In Anvar P.V. (supra), this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. We may only add that this is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the concerned person, the Judge conducting the trial must summon the person/persons referred to in Section 65B(4) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to keep in mind the general principle that the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of the Cr.PC.”

14. The Petitioner has relied upon the decision in the case of *Arjun Panditrao Khotkar (supra)* in support of the application under Exh. 453. The Respondents filed a reply to the said application and submitted that the Petitioner was in effect seeking a review of the order dated 13 January

2022 without challenging the same. It was submitted that the Petitioner ought to have challenged the order dated 13 January 2022. It was also submitted that Petitioner never demanded or insisted the issuance of certificate under Section 65-B and has made the said application not only belatedly but as an afterthought to cover up the Petitioner's lapses in the evidence. The Trial Court after considering the application as well as the reply, passed the impugned order dated 30 April 2022 below Exh.453 rejecting the said application by the Petitioner to call upon the Income Tax department to provide a proper certificate/letter in support of the Income Tax records of Prakash Ahuja holding in paragraph 12 as under:-

“12. In the case in hand, though the plaintiff has stated in para 6 of the application that he having done everything to obtain the necessary certificate shall be relieved from such an obligation as the Plaintiff has no control over such a documents but not brought on record any documents that he has taken the efforts for obtaining necessary certificate from concerned department and the concerned department has refused to issue the same. Though, Section 65-B does not speak about the stage at which such a certificate must be produced to the Court. But the said certificate must be demanded by the party either on its own application or by moving an application before the Court for issuance of directions to concern department for submitting said necessary certification either before submitting the argument on relevant documents or at least even before passing an order on said documents. But the plaintiff has neither moved an application on his own account for getting the certificate directly to the concerned department nor filed an application before the Court for directing the concerned department for submitting the certificate before passing an order of

admissibility of the documents filed below list Exh.313. The plaintiff has filed present application after deciding the admissibility of the documents filed below list Exhs. 313. Hence, I most humbly mentioned that the ratio of the Hon'ble Authority is not helpful to the plaintiff. Considering, the facts and circumstances of the case and ratio of authorities, the application is not enable. Hence, I pass following order:-

ORDER

- 1. Application Exh. 453 is here by rejected.*
- 2. Costs in cause.*
- 3. Parties to take note.”*

15. The Trial Court has observed that the Petitioner neither moved an application on his own account for getting the certificate directly from the concerned department nor filed an application before the Court for directing the concerned department for submitting the certificate before passing an order of admissibility of documents filed below Exh. 313. In my view, this finding of the Trial Court is erroneous and nothing but of clear non application of mind in as much as the prayers in the application under Exh. 453 clearly requests the Tribunal to call upon the Income Tax department to do so. Not only that the Petitioner has also as set out above, taken all efforts to procure not only the Income Tax Returns of Prakash Ahuja, but had also obtained an order for issuance of witness summons to the Commissioner of Income Tax for production of Income Tax Returns of the Respondents as well as Prakash Ahuja. It was just that the Income Tax

officer deployed by the Commissioner pursuant to the order dated 8 February 2019 produced copies of the Income Tax records of the Respondents as well as Prakash Ahuja but certificates only in respect of the returns of the Respondents were furnished. Therefore, only the letters below Exhs.345,441 and 442 with respect to the Respondents' were exhibited but since documents filed below list Exh.313 were without the necessary certificate, the same were not exhibited in evidence. Paragraph 14 of the order dated 13 January 2022 quoted above clearly bears this out.

16. The arguments made on behalf of the Respondents that the order dated 13 January 2022 ought to have been challenged or that the challenge to the order dated 30 April 2022 amounts to a review of the order dated 13 January 2022, in my view, is completely misplaced and misconceived as there is no question of review of order dated 13 January 2022; the order dated 13 January 2022 directed list under Exh. 313 not to be exhibited as there was no certificate under Section 65-B whereas the application under Exh. 453 was for a direction to the Income tax Department for the said certificate. What else could the Petitioner have done. The Petitioner had correctly filed an application under Exh. 453

pursuant to the order dated 13 January 2022 making a request to the Trial Court to call upon the Income Tax department to provide the necessary certificate and on receiving such certificate to mark Exh.313 in evidence and it is pursuant to the rejection of that prayer on 30 April 2022 by the Trial Court that Petitioner has impugned the said order in this Petition. No fault can be found with this approach. This certainly does not amount to a review of the order dated 13 January 2022. Even the argument of the learned counsel for the Respondents that the request is belated is also misconceived as the application for Section 65-B certificate can be made at any stage and I am in agreement with the learned Counsel for the Petitioner who while placing reliance on the decision of the Hon'ble Supreme Court in the case of *Arjun Panditrao Khotkar (supra)* submitted that Section 65-B clearly does not speak of the stage at which such a certificate must be furnished to the Court. The documents in respect of Shri Prakash Ahuja, having admittedly, been furnished by the Income Tax Department, the said certificate being mandatorily required under Section 65-B to certify the documents necessary to decide the *lis* between the parties, an application for the same cannot remotely said to be an abuse of the process of law or be an application to cover up lapses in the evidence. The Petitioner had put all his efforts to obtain the said certificate and

therefore it also cannot be said that there was a lapse on his part.

17. As observed above, the Petitioner has done everything to obtain the necessary certificate in respect of the documents produced by the Income Tax Department, had also moved the application Exh. 453 before the Trial Court for issuance of direction to the Income Tax Department for the necessary certification and despite that the Trial Court has observed that the Petitioner has not moved an application before the Court for direction to the concerned department for submitting certificate. The learned Trial Judge has clearly erred in holding so.

18. I am, therefore, of the considered view that there clearly has been a non application of mind resulting in perversity, warranting interference of this Court. The order dated 30 April 2022, therefore deserves to be quashed and set aside and is hereby quashed and set aside. The Writ Petition is made absolute in terms of prayer clause (a), which reads thus:-

“(a) this Hon’ble Court be pleased to issue a Writ of Certiorari or any appropriate Writ, order of direction under Article 227 of the Constitution of India, calling for the papers and proceedings in Order below Exhibit No. 453 in L.E. Suit No. 71/85 of 2012 filed by the Petitioner before the Hon’ble Small Causes Court at Mumbai, and after going through the legality and validity of Order dated April 30, 2022, the same be quashed and set aside;”

19. The Hon'ble Supreme Court in the case of *Arjun Panditrao Khotkar (supra)* has clearly observed that when documents from electronic record are produced by authorities and are sought to be used in evidence, in order to ensure the source and authenticity of the said documents, it is not only mandatory to obtain a certificate under Section 65-B (4) of the Indian Evidence Act, but despite efforts if the person seeking such a certificate is unable to do so, he can apply to the Court for its production and the judge conducting the trial must require that such certificate be given.

20. In the facts of this case, the documents filed below list Exh. 313 are photocopies produced by the Income Tax department without certificate, which documents are sought to be produced and used in evidence in the said suit. The Trial Court is, therefore, directed to call upon the Income Tax department to provide a proper certificate as per the requirements of Section 65-B of the Indian Evidence Act, 1872 in respect of the documents of Income Tax records of late Mr. Prakash Ahuja below list Exh.313 within a period of four weeks from the date of uploading of this order. Petition stands allowed in the above terms. Parties to bear their own costs.

21. It is made clear that this Court has not given any finding on the facts/merits of the said suit. The reasons given herein are only for the purposes of deciding the petition. All contentions/issues are left open to be decided at the trial of the suit which the trial Court shall decide on its own merits in accordance with law.

(ABHAY AHUJA, J.)