



A.No.2059 of 2023 in

C.S.No.12 of 2013

R.N.MANJULA,J.

This application has been filed seeking permission to mark the photocopy of the documents mentioned in the list of documents annexed to the Judges summons.

2. The learned counsel for the applicant / plaintiff submitted that the originals of the documents listed are not in their possession and there was a correspondence between the parties during the period between 2009 and 2011; since the original documents are not available, this application has been filed to receive the photocopies of the same as secondary evidence.

3. The learned counsel for the second respondent filed counter and submitted that in the reply filed by him to the notice to produce the documents given by the plaintiff, he has stated that those documents are not in his possession or custody; without filing of certain documents, the suit itself ought not to have been taken on file; for many of the



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documents, the second respondent is not a party; for certain correspondence between the plaintiff and the defendants, it is always open to the plaintiff to file the office copy, not the xerox copy; the plaintiff cannot have the custody of the letter dated 24.08.2009 with regard to the clearance of the goods from the first defendant to the second defendant; since the plaintiff is not a custodian of the said documents, it cannot be marked by him.

4. On perusal of the list of the documents for which the secondary evidence is sought to be produced, it is seen that excepting the document No.1 (i.e) letter dated 24.08.2009 regarding the clearance of the goods from the first defendant to the second defendant, the copies of the rest of the documents can be produced.

5. The learned counsel for the second respondent further submitted that the documents sought to be marked are all xerox copies.

6. Since the plaintiff does not have the originals, they have got no other option except to produce the copies as secondary evidence.



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However, it goes without saying that all these documents can be received only subject to proof and relevancy. So far as the document No.1 which is the document No.3 of the list of the documents in the plaint, the plaintiff has rightly given notice to the concerned party who is the custodian of the same. So, in the absence of the production of original or copy by the concerned party under whose custody the document is lying, the plaintiff has got no other option except to produce the photocopy, if any, which is under their custody. However, it is for the plaintiff to explain how they got into the custody of the said document and that can be a matter for appreciation of evidence.

7. With these observations, this application is allowed.

07.06.2023

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