



C.R.P.No.1450 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 18.04.2023

Delivered On: 28.04.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.1450 of 2020

and

C.M.P.No.8362 of 2020

1.B.Guru

2.P.Ramasamy

... Petitioners/Defendants

Vs.

V.Manimegalai

... Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to reject and unmark the documents filed by the Respondent/Plaintiff marked as Ex.A6 to Ex.A9 in O.S.No.3971 of 2018 pending before the IVth Assistant City Civil Court, Chennai.

For Petitioners : Mr.S.P.Vijaya Ragavan

For Respondent : Ms.K.Poovarasi for
Mr.T.Jayaramraj

Mr.D.Murugan-Advocate Commissioner

ORDER

This Civil Revision Petition had been filed seeking to reject and unmark the documents filed by the Respondent/Plaintiff marked as Ex.A6 to



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Ex.A9 in O.S.No.3971 of 2018 pending before the learned IV Assistant Judge, City Civil Court, Chennai.

2.The learned Counsel for the Revision Petitioners submitted that the Petitioners herein as Defendants in the suit filed this Petition objecting to the marking of the documents by the Plaintiff during her evidence as P.W.1. Before the learned IV Assistant Judge, City Civil Court, Chennai, the Plaintiff had examined as P.W-1 and marked documents as Ex.A1 to Ex.A10. The learned Counsel for the Defendants objected the marking of the documents, particularly, Ex.A6 to Ex.A9 as the Plaintiff had not filed Ex.A6 to Ex.A9 along with the plaint. If the originals of Ex.A6 to Ex.A9 were not filed along with the plaint, the Plaintiff ought to have obtained permission of the Court to mark such documents. The Plaintiff had not filed any petition seeking permission from the Court under Order VII Rule 14(2) CPC and Section 65(B) of Indian Evidence Act and mechanically marked the documents as Ex.P6 to Ex.P9. Therefore, the learned Counsel for the Defendants objected to the same. In spite of the objections, the learned Trial Judge, IV Assistant City Civil Court, Chennai marked the documents mechanically. The Defendants had filed memo under Order XVIII Rule 4



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r/w Section 151 of CPC raising objections regarding the marking of documents by the Plaintiff as P.W.1. It is the further submission of the learned Counsel for the Revision Petitioners/Defendants that the Revision Petitioners as Defendants in the suit through their Counsel had filed memo under Order XVIII Rule 4 r/w Section 151 of CPC that nowhere in the plaint the Plaintiff had stated or in her affidavit as examination-in-chief she had stated anything regarding the documents under Ex.A6 to Ex.A9 under whose possession those documents were and what was the reason that prevented her from filing the originals of documents under Ex.A6 to Ex.A9 while filing the suit. Without those details, the documents under Ex.A6 to Ex.A9 could not have been marked. The documents under Ex.A6 to Ex.A9 were not produced before settlement of issues as required under Order XIII, Rule-1 CPC. No copy of the same was furnished to the Defendants as required under Order XVIII Rule 4 CPC. The mandate of Section 65 (B) of the Indian Evidence Act was not followed particularly in the light of the reported ruling of Hon'ble Supreme Court in **2014 (10) SCC 473** in the case of ***P.V.Anvar -vs- P.K.Basheer and others.*** Further submission of the learned Counsel for the Revision Petitioner that the Court is duty bound under Order XVIII Rule 4(1) CPC to ensure proof and admissibility of



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documents filed along with the affidavit. Therefore, the learned Counsel for the Revision Petitioners seek to eschew the evidence of the P.W.1 and erase the marking of documents under Ex.A6 to Ex.A9. It is further submission that electronically generated documents are to be certified under Section 65(B) of the Indian Evidence Act. That was not followed by the Plaintiff. Therefore, the documents under Ex.A6 to Ex.A9 are to be rejected and erased from the records.

3. The learned Counsel for the Respondent submitted that the ruling relied by the learned Counsel for the Revision Petitioners reported in **2014 (10) SCC 473** in the case of ***P.V.Anvar Vs P.K.Basheer and others*** is not mandatory. The learned Counsel for the Respondent had relied upon the ruling reported in **(2020) 3 SCC 216** in the case of ***Arjun Panditrao Khotkar Vs Kailash Kushanrao Gorantyal*** particularly relied the Paragraph No. 26 and 29 which is extracted hereunder:-

“26. Sections 65-A and 65-B of the Evidence Act, 1872 cannot be held to be a complete code on the subject. In Anvar P.V., this Court in para 24 clarified that primary evidence of electronic record was not covered under Sections 65-A and 65-B of the Evidence Act. Primary evidence is the document produced before the Court and the expression “document” is defined in Section 3 of the Evidence Act to



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mean any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter”.

“29. The applicability of procedural requirement under Section 65-B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in the absence of certificate under Section 65-B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65- B(4) is not always mandatory”.

4. Therefore, the learned Counsel for the Respondent submitted that in the light of the latest ruling of Hon'ble Supreme Court, the objection of the learned Counsel for the Revision Petitioners insisting a certificate under Section 65(B) of the Indian Evidence Act is not mandatory. Therefore, the Civil Revision Petition lacks merit and it is to be dismissed.



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5. It is the contention of the learned Counsel for the Revision Petitioners that the documents mentioned in the plaint are Photostat copies of Aadhar card of the Plaintiff and her children under Order VII Rule 14(2) CPC. The documents marked under Order VII Rule 14(1) CPC are the original documents of the E.B card with payment receipt, Gas payment receipt, School ID card of Plaintiffs daughter, Plaintiff's family card. In the list of documents under Order VII Rule 14(2) CPC, the photos with CD is mentioned. Therefore, if the CD is marked certificate under Section 65(B) of the Indian Evidence Act has to be certified by the person who had taken down the photos from the mobile to the CD.

6. In the light of the above, the order passed by the learned IV Assistant Judge, City Civil Court, Chennai does not cause prejudice to the Revision Petitioners herein as he had recorded the objections raised by the Revision Petitioners herein as Defendants in the suit. Also the memo filed by the Revision Petitioners had been recorded by the learned Judge. The subject matter raised in the memo gives the Defendants an opportunity to cross-examine the Plaintiff in the trial. The objections raised by the learned Counsel for the Defendants in the memo can be relegated in the conclusion



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of the trial and shall be considered by the learned Trial Judge for appreciation of evidence. Merely furnishing documents by the witness can not at all be considered as appreciation of evidence. It is for the learned Trial Judge to relate the documents to the contents of the deposition either the affidavit or the deposition by the witness before the Court and along with the dispute which is raised as issues whether the evidence let in by the witness satisfies issues framed by the Court with appreciation of evidence. The appreciation of evidence is to be considered at the fag end of the trial. For the present, the learned Trial Judge had recorded the objections. The memo filed by the learned Counsel for the Defendants also being recorded by the learned Judge concerned whether Ex.A6 to Ex.A9 is to be accepted or rejected is to be considered only after conclusion of trial, on assessment of evidence of both parties in the light of the provisions of Indian Evidence Act.

7. In the light of the above, the memo is left to the learned Trial Judge to consider in the fag end of the trial. The filing of the Civil Revision Petition based on the memo at the stage one of the trial that the learned Trial Judge had mechanically allowed the Plaintiff to mark documents cannot be



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accepted considering the fact that the suit records had been sent to the Adhoc Judge for recording of evidence. Only while discussing the evidence in the course of the judgment, the learned Trial Judge discusses the document and the evidence of each of the witnesses.

8. As per the guidelines issued to the learned Trial Judges, the relevancy and admissibility of any document filed by any of the witnesses can be relegated to the fag end of the trial on what ground the objections were raised can be recorded then and there by the learned Judge concerned. Here, in this case, the Trial Judge had correctly marked the documents stating the documents had been marked with objection of the Defendants. What are the objections are available to the learned Judge in the light of the memo filed by the learned Counsel for the Defendants before the Court. Therefore, on conclusion of the recording of the evidence, when the case records are received back by the learned IV Assistant Judge after recording of evidence by Adhoc Judge, the learned Judge on discussion of the evidence can appreciate evidence regarding admissibility and relevancy of the document to the subject matter raised in the issue framed by the Court and also the points raised regarding the certificate required under Section



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65(B) of the Indian Evidence Act regarding electronically generated documents.

9. As per the ruling cited by the learned Counsel for the Respondent reported in **2020 (3) SCC 216** in the case of **Arjun Panditrao Khotkar Vs Kailash Kushanrao Gorantyal**, the Hon'ble Supreme Court has observed as follows:-

“29. The applicability of procedural requirement under Section 65-B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in the absence of certificate under Section 65-B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65- B(4) is not always mandatory”.

10. Therefore, as pointed out by the learned Counsel for the Respondent, the requirement of certificate under Section 65(B) of Indian Evidence Act is not always mandatory. In the absence of certificate, the



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electronic evidence if found to be manipulated, it cannot be relied by the Court. Therefore, based on the documents or materials marked by the Plaintiff, if the suit is decreed based on such documents, then it will result in miscarriage of justice by ignoring the safe procedures for the Court to consider the evidence. It should be admissible evidence and subject to proof. Therefore, if the Defendants had raised objections then the marking of such documents with objection has to be marked regarding the objection. The objection raised by the party also is to be recorded regarding authenticity, regarding admissibility, regarding relevancy etc.

11. In the light of the above discussion, the learned IV Assistant Judge, City Civil Court, Chennai is directed to consider the objection raised by filing memo by the Defendants in the suit in the conclusion of the trial while assessing the evidence.

12. In the light of the reported ruling, the learned IV Assistant Judge, City Civil Court shall assess the evidence based on the objection of the Defendants in the Trial Court. If documents had been marked with objection, Section 65(B) of Indian Evidence Act was not followed by



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issuing certificate regarding the photographs furnished from the mobile which does not have certificate by which mobile it was taken, by whom it was taken. Only then, certificate has to be issued. In the absence of said certificate, the documents have no value. Therefore, the learned Trial Judge is directed to consider those materials and objections raised by the Defendants.

In the result, the **Civil Revision Petition is disposed of** with the above directions. The order passed by the learned IV Assistant Judge, City Civil Court, Chennai marking the documents with objections is not at all set aside. Consequently, connected miscellaneous petition is closed.

28.04.2023

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order
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SATHI KUMAR SUKUMARA KURUP, J.

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To

1. The learned IV Assistant City Civil Court, Chennai.
2. Section Officer,
V.R.Section,
High Court, Madras

Order made in
C.R.P.No.1450 of 2020
and
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