



A.No.2317 of 2023 in C.S.No.44 of 2021

P.T.ASHA.J,

This application is filed for permitting the applicant / plaintiff to mark the sales invoices filed as Document No.4 and promotional materials filed as Document No.5 as secondary evidence.

2.In the affidavit filed in support of this application, the following statement has been made as the reason for seeking to file the secondary evidence:

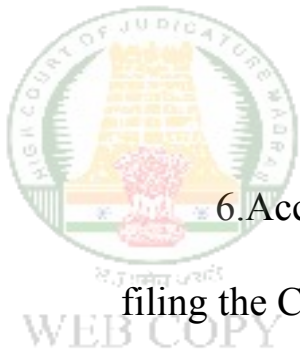
“The original sales invoices between the years 1977-2009 filed as part of Document No. 4 were unavailable since companies are statutorily not required to maintain documents prior to 8 years and the invoices between the years 2015-2020 are computer generated invoices which shall be accompanied by an affidavit under Section 65B of the Indian Evidence Act, 1872 at the time of chief examination of Applicant/Plaintiff's evidence. Further, certain original promotional materials filed as Document No. 5 were lost in transition and are therefore unavailable, however, the Applicant/Plaintiff maintains scanned copies of all the aforementioned documents. The remaining promotional materials are printouts that were downloaded by my office from the newspaper's website which shall also be accompanied by an affidavit under Section 65B of the Indian Evidence Act, 1872 at the time of chief examination of Applicant/Plaintiff's evidence.”



3. Heard the learned counsel for the applicant/plaintiff and the learned counsel for the respondent.

4. A perusal of the documents in question, particularly the document No. 4 series, is seen that the documents shown in Pages 7 to 12 of the original typed set of papers filed by the applicant / plaintiff, are true attested copies, which clearly shows, that the original should have been available when a copy was taken. **Therefore, these documents cannot be permitted to be marked as secondary evidence.** As regards the others in document No.4, the learned counsel has stated that these documents would be accompanied by the certificate under Section 65B of the Evidence Act. Therefore, the same is ordered. As regards the document No.5, they are promotional materials, which can also be marked as secondary evidence.

5. Considering the submissions made on either side and being satisfied with the reasons stated in the affidavit filed in support of this application, this Court is inclined to allow the application but however the above said documents which are received shall be marked as additional evidence subject to proof and relevancy.



6. Accordingly, the application is **partly** allowed. Post the matter for filing the Case Management Schedule on 11.08.2023.

03.08.2023

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P.T.ASHA.J

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