



A. No. 3864 of 2023 in C.S. No. 269 of 2011

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ABDUL QUDDHOSE, J.

This application has been filed under Section 65 of the Indian Evidence Act seeking leave of this Court to produce photocopies of the documents mentioned in the schedule to the Judges summons.

2. The Suit has been filed for recovery of money. The plaintiff claims that on account of non-submission of 'C' Forms by the defendant, the plaintiff had to pay the differential Sales Tax. In such circumstances, the Suit has been filed. The written statement has also been filed by the defendant in the said Suit, disputing its liability. Pending adjudication of the Suit, this application has been filed seeking leave of this Court for letting in additional secondary evidence in respect of the following documents:-



A. No. 3864 of 2023 in C.S. No. 269 of 2011

<i>Sl.No</i>	<i>Date</i>	<i>Document</i>
1.	06.01.1984	Plaintiff's certificate of Registration of Sales Tax
2.	02.07.2005	Plaintiff's offer of Dealership to the Defendant
3.	undated	Letter from the Defendant to Plaintiff enclosing Manual 'C' Forms April – September 2005, October – December 2005 and January – March 2006
4.	08.03.2008	Dispensing Pump & Selling License agreement
5.	27.08.2010	Circular issued by Commercial Taxes Department, Government of Puducherry
6.		Circular for Manual 'C' Forms issued by Commercial Taxes Department, Government of Puducherry
7.	28.12.2010	Minutes of Meeting held between Plaintiff and Defendant
8.	31.07.2012	Demand Notice issued to the Applicant by the Deputy Commissioner

3. The reasons given for non-filing of the aforesaid documents at the time of filing of the Suit are as follows:-

- (a) At the time of filing of the suit, all records were maintained by the plaintiff's Chennai Territorial Office under whose jurisdiction, one of the retail outlets at Kirumambakkam, Pondicherry would fall;
- (b) Subsequently, on redrawing the territories in Tamil Nadu, the jurisdiction of the said retail outlet was transferred to territorial jurisdiction;



A. No. 3864 of 2023 in C.S. No. 269 of 2011

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- (c) upon such transfer, all the documents relating to the outlets in Pondicherry including that of the retail outlet at Kirumambakkam, Pondicherry, in respect of which the present dispute has arisen were transferred to the Territorial Office;
- (d) It appears that during the process of transfer, some of the original documents were lost;
- (e) Some other documents such as Circulars issued by the Commercial Tax Department, Puducherry, being the Government Documents, the original is not available with the applicant; only a photocopy of the said circular has been made available to the applicant by the Commercial Tax Department, Puducherry.

4. A detailed counter has been filed by the respondent to Application No.3864 of 2023. They would contend that the present application, which is at this stage is not maintainable. According to them, no sufficient cause has been shown by the applicant for not filing the documents at the time of filing of the Suit.



A. No. 3864 of 2023 in C.S. No. 269 of 2011

5. Learned counsel for applicant / plaintiff drew the attention of this

Court to the judgment of the Hon'ble Supreme Court of India in the case of ***Dhanpat -vs- Sheo Ram (deceased) and others*** reported in [(2020) 16 SCC 209]. In particular, she referred to para 22 of the said judgment. As seen from the said judgment, it is clear that there is no requirement that an application is required to be filed in terms of Section 65(c) of the Indian Evidence Act for secondary evidence. The Hon'ble Supreme Court has also made it clear that the party to the *lis* may chose to file an application which is required to be considered by the Trial Court but if any party to the Suit has laid foundation of leading of secondary evidence, either in the plaint or in the evidence, the secondary evidence cannot be ousted for consideration only because an application for permission to lead secondary evidence was not filed. Therefore, as seen from the aforesaid judgment, even without an application, the Court can permit any of the party to the Suit to lead secondary evidence, once the Court gets satisfied that secondary evidence can be permitted.

6. Learned counsel for the applicant also drew the attention of this



Court to another judgment of the learned Single Judge of the Bombay Court in the case of *Nanda Ashok -vs- Annasaheb Trimbak Nikam and others* reported in [(2022) SCC online Bom 2114], which also has referred to the judgment of the Hon'ble Supreme Court in the case of *Dhanpat -vs- Sheo Ram (deceased) and others* reported in [(2020) 16 SCC 209] and held that there is no necessity to file a separate application seeking leave of this Court for letting in secondary evidence. Further, the learned counsel for the defendant has in fact relied upon the judgment of the Hon'ble Supreme Court of India in the case of *In Re: to issue certain guidelines regarding inadequancies and defeciencies in Criminal Trials -vs- the State of Andra Pradesh and others* reported in Suo moto Writ (CrI) No.(S) 1/2017 dated 20.04.2021. The said judgment did not deal with an application seeking leave of this Court for letting in secondary evidence as per the provisions of Section 65 of the Indian Evidence Act. It was dealing with Section 148 of the Cr.P.C, which relates to the following:-

“148. Court to decide when question shall be asked and when witness compelled to answer. — If any such question relates to a matter not relevant to the suit or proceeding, except in so far



as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it.

In exercising its discretion, the Court shall have regard to the following considerations:—

(1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

(2) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

(3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his



evidence;

(4) the Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable."

7. Therefore, the said judgment has no applicability for deciding as to whether the leave sought for by the applicant in this application seeking permission to lead secondary evidence is maintainable or not.

8. The other judgments relied upon by the learned counsel for the respondents in ***Bipin Shantilal Panchal -vs- State of Gujarat and another*** reported in [(2001) 3 SCC 1] did not also deal with Section 65 of the Indian Evidence Act, but only deals with circumstances under which secondary evidence can be permitted and the procedures to be followed by Trial Courts at the evidence taking stage. Objections have also not been raised regarding admissibility of any material or item of oral evidence. Further, in both the decisions relied upon by the learned counsel for the respondent / defendant referred to supra, it dealt with criminal trials and did not deal with civil



A. No. 3864 of 2023 in C.S. No. 269 of 2011

disputes.

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9. The plaintiff is a public sector undertaking and most of the documents sought to be filed as secondary evidence by the plaintiff are all public documents. The Suit claim has been laid for non-submission of 'C' Forms by the defendant and according to the plaintiff to prove the same, the plaintiff had to pay the Sales Tax. On a prima facie consideration, this Court is of the considered view that the documents which were not filed along with the plaint and sought to be filed as secondary evidence may be required for the plaintiff to prove its case. No prejudice would be caused if the documents were allowed to be taken on record and the plaintiff is permitted to file the same as documentary evidence subject to its proof and relevancy. None of the judgments relied upon by the learned counsel for the respondent prohibits this Court from permitting the plaintiff to produce photocopies of the documents referred to in this application subject to its proof and relevancy.

10. For the foregoing reasons, the contentions of the respondent /



A. No. 3864 of 2023 in C.S. No. 269 of 2011

defendant, is rejected by this Court and accordingly, this application is **allowed** as prayed for and the documents disclosed in the affidavit as well as in the Judges summons are allowed to be produced by the plaintiff and marked as secondary evidence subject to its proof and relevancy. The defendant is also entitled to cross-examine the plaintiff with regard to the proof and relevancy of the documents disclosed in the affidavit as well as in the Judges summons filed in support of this application. Both the counsels are directed to file the draft case management schedule on the next hearing.

11. Post the matter under the caption “Case Management Hearing” on **19.10.2023**.

13.10.2023

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A. No. 3864 of 2023 in C.S. No. 269 of 2011

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A. No. 3864 of 2023 in
C.S. No. 269 of 2011

13.10.2023