

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.10.2023

Pronounced on : 30.10.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

O.A.Nos.773 & 774 of 2023

in

E.P.No.3 of 2021

M.Palaniappan

... Applicant/Petitioner in both Applications

Vs.

- 1.Vijayabaskar. C
- 2.Alaguraja. V
- 3.Azhagumeena. P
- 4.Arumugam. P
- 5.Karthi Prabhakaran. O
- 6.Saravanan. R
- 7.Senthil Kumar. P
- 8.Vijay. A
- 9.Abdul Nazar. K
- 10.Elayaraja. R
- 11.Syed Mohamed. J
- 12.Dhanalakshmi. M
- 13.Thiruventhiran. V
- 14.Palanisamy. A
- 15.Balasubramanian. M
- 16.Manikandan. K
- 17.Manikandan. C
- 18.Ramesh. M
- 19.Rameshkumar. P

- 20.Rajavarman. R
21.Jothivel. A
22.The Election Commission of India
Represented by its Chief Election Commissioner,
Nirvachan Sadan, Ashoka Road,
New Delhi – 110 001.
- 23.The Chief Electoral Officer, Tamil Nadu
Election Commission of India,
Public (Elections) Department, Secretariat,
Fort St. George,
Chennai – 600 009.
- 24.The District Collector -cum-
District Returning Officer,
District Collector Office,
Pudukkottai District,
Tamil Nadu – 622 005.
- 25.The Returning Officer
179-Viralimalai Assembly Constituency,
Illuppur Taluk,
Pudukkotai District,
Tamil Nadu – 622 102.
- 26.Dhandayudhapani,
The Returning Officer/Revenue Divisional Officer (RDO)
179 – Viralimalai Assembly Constituency,
Illuppur Taluk,
Pudukkotai District,
Tamil Nadu – 622 102.
- 27.Janaki
DRO -cum- Election Nodal Officer
for 179 – Viralimalai Assembly Constituency
and Kantharvakottai
District Collector Office,
Pudukottai – 622 005.
- ... Respondents / Respondents in both Applications

Prayer in O.A.No.773 of 2023:- This application filed under Order XIV Rule 8 of O.S Rules R/w. Section 65B of the Indian Evidence Act, 1872 and Section 151 of CPC, 1908, praying to receive the documents as electronic evidence along with respective certificates under Section 65B of the Indian Evidence Act, 1872.

Prayer in O.A.No.774 of 2023:- This application filed under Order XIV Rule 8 of O.S Rules R/w. Section 65B of the Indian Evidence Act, 1872 and Section 151 of CPC, 1908, praying to receive the documents as secondary evidence.

For Petitioner : Mr.P.Richardson Wilson, in both Applns.

For R1 : Mr.B.Aravind Srevatsa, in both Applns.

COMMON ORDER

Both these applications have been filed by the petitioner in Elp.No.3 of 2021.

2.In O.A.No.773 of 2023, the petitioner seeks permission to receive documents as electronic evidence along with certificates under Section 65B of the Indian Evidence Act, 1872 and to permit the applicant to mark the documents on his side in the election petition.

3.In O.A.No.774 of 2023, the petitioner seeks permission of this Court to receive documents as secondary evidence.

4.In both the applications, a common affidavit had been filed and a common counter had been filed. Even though the reliefs are different, since they surround the same issues of admissibility of documents marked during the course of evidence and the documents also overlap to a little extent, a common order is passed.

5.In the affidavit filed in support of the applications, it had been stated that the petitioner had been examined as PW-1 and during the course of his examination, he had marked Exs.P1 to P54. Some of the documents were xerox copies and some of the documents were electronically generated documents. It is stated that in his proof affidavit, he had given necessary explanation, as to why secondary evidence had been produced and also about the nature of evidence, which had been electronically generated. It had also been stated that while the documents were marked objections had been raised on behalf of the 1st respondent and the objections had been noted and the documents had been marked subject to the said objections.

6.During the course of arguments in the main election petition, after trial, necessarily the learned counsels will have to address the objections raised and whether this Court should take into consideration the documents marked as secondary evidence and the electronically generated documents as part of the discussion to determine the decision in the election petition. At this stage, however, these applications have been filed to receive the documents marked as secondary evidence and to permit presenting the certificates under Section 65B of the Indian Evidence Act, 1872 with respect to the electronically generated documents. The list of documents produced as secondary evidence and the reasons why secondary evidence had been produced had been stated in the affidavit. Similarly, the list of document for which certificates under Section 65B of the Indian Evidence Act, 1872 are required have also been listed in the affidavit.

7.In the counter affidavit, the objections relating to producing the documents as secondary evidence had been stated. It had been contended that the Court should not take into consideration the documents marked as secondary evidence. With respect to the electronically generated documents and the application seeking to

receive the certificates under Section 65B of the Indian Evidence Act, 1872, it had been stated that the reasons given by the petitioner do not satisfy the mandatory requirements of Section 65B of the Indian Evidence Act, 1872. The objections raised with respect to each one of the documents have also been given.

8.Mr.P.Richardson Wilson, learned counsel for the petitioner and Mr.B.Aravind Srevatsa, learned counsel for the 1st respondent advanced arguments and placed reliance on the reasons given in the affidavit filed in support of the applications and the objections stated in the counter affidavit. It is therefore imperative that this Court extracts the list of documents, which had been produced as secondary evidence and the reasons for producing them as secondary evidence and the objections there to and also gives the list of documents for which certificates under Section 65B of the Indian Evidence Act, 1872 are required and the objections there to.

9.The following tabular column would be of assistance for further discussion. Tabular Column A below would indicate the documents produced as secondary evidence, the reasons and the objections raised.

Tabular Column B below contains the list of documents for which certificates under Section 65B of the Indian Evidence Act, 1872 had been sought to be produced and the objections there to.

Tabular Column A:-

<i>S. NO</i>	<i>Doc.No . in the petition</i>	<i>Document Date</i>	<i>Document Description</i>	<i>Reason why Photocopy is produced</i>	<i>Objections</i>
1.	12	27.02.2021	Order of the District Election Officer cum District Collector	Only a Photocopy was given to all Candidates	1. No explanation how the Election Petitioner got the Document 2. No explanation who gave the copies to the Election Petitioner.
2.	13	28.02.2021	Complaint given by K.K. Chellapandiyan to returning officer	Only photocopy was retained in the file, original was issued to the Returning officer	1. Election Petitioner is not the author of the document, he cannot mark the document. 2. No acknowledgment has been filed.
3.	15	13.03.2021	Form- 26 filed by the Election Petitioner	Only photocopy was retained, original was filed during nomination	It is a public document. Only certified copies admissible as per Sec 65(e) of Indian Evidence Act, 1872.
4	18	23.03.2021	Complaint given by K.K. Chellapandiyan	Only a photocopy was retained	1. Election Petitioner is not the author of

S. NO	Doc.No . in the petition	Document Date	Document Description	Reason why Photocopy is produced	Objections
			n to Returning officer, Viralimalai Constituency	in the file, original was issued to the Returning office	the document, he cannot mark the document. 2. No acknowledgment has been filed.
5	20	27.03.2021	Copy of CSR No. 122 of 2021 Illupur Police Station	CSR not issued to this prtitioner, a photocopy was obtained from the police station	It is a public document. Only certified copies admissible as per sec 65(e) of Indian Evidence Act,1872.
6	22	28.03.2021	Complaint given by K.K. Chellapandiya n to Returning officer, Viralimalai Constituency	Only a photocopy was retained in the file, original was issued to the Returning office	1. Election Petitioner is not the author of the document, he cannot mark the document. 2. No acknowledgment has been filed.
7.	24	30.03.2021	Complaint given by M. Chelladurai to District Election officer, Viralimalai Constituency	Only a photocopy was retained in the file, original was issued to the Returning office	1. Election Petitioner is not the author of the document, he cannot mark the document. 2. No acknowledgment has been filed.
8.	43	06.04.2021	Form 17-C Part I, Polling Station 73, Control Unit No. BCUAF17721	Only a photocopy was given to me	1. It is a public document. Only certified copies admissible as per Rule 93 of

<i>S. NO</i>	<i>Doc.No . in the petition</i>	<i>Document Date</i>	<i>Document Description</i>	<i>Reason why Photocopy is produced</i>	<i>Objections</i>
			Ballot Unit No. BBUEG 06420, BBUEH 73286		the Conduct of Election Rules, 1961 read with section 65(e) of Indian Evidence Act,1872. 2. Deponent has not stated where and who gave the document to him.
9	46	060421	Form 17-C Part-I, Polling Station 75, Control Unit No.BCUAF05 394, Ballot Unit No.BBUEF98 834	Only Photocopy was given to me.	1. It is a public document. Only certified copies admissible as per Rule 93 of the Conduct of Election Rules, 1961 read with section 65(e) of Indian Evidence Act,1872. 2. Deponent has not stated where and who gave the document to him.
10	51	060421	Form 17-C Part I, Polling Station 90, Control Unit No. BCUEF 80200, Ballot Unit No. 26AA336200/ 26 AA3375	Only Photocopy was given to me	1. It is a public document. Only certified copies admissible as per Rule 93 of the Conduct of Election Rules, 1961 read with

<i>S. NO</i>	<i>Doc.No . in the petition</i>	<i>Document Date</i>	<i>Document Description</i>	<i>Reason why Photocopy is produced</i>	<i>Objections</i>
					section 65(e) of Indian Evidence Act,1872. 2. Deponent has not stated where and who gave the document to him.
11	55	070421	FIR in Crime No.147 of 2021 Viralimalai Police Station	FIR was not issued to me, a photocopy of the same was obtained from the concerned Police Station	It is a public document. Only certified copies admissible as per sec 65(e) of Indian Evidence Act,1872. (Deponent has not stated where and who gave the document to him)
12	60	020521	Complaint given by Petitioner to Chief Electoral officer Vote count Round-6, Table No.14 EVM not Properly sealed and without tag to declare the statement are correct	Original was given to the CEO and only a photocopy was retained by me.	1. It is a document where Only certified copies admissible as per Rule 93 of the Conduct of Election Rules, 1961 read with section 65(e) of Indian Evidence Act,1872. 2. No acknowledgment has been filed.
13	62	020521	Letter given by Petitioner	Original was given to the	No grounds under Section 65 of the

<i>S. NO</i>	<i>Doc.No . in the petition</i>	<i>Document Date</i>	<i>Document Description</i>	<i>Reason why Photocopy is produced</i>	<i>Objections</i>
			to District Election Officer	DEO and only a photocopy was retained by me.	Indian Evidence Act.
14	63	020521	Letter issued by the Returning Officer to the Petitioner	Only a photocopy was retained in the file, original was issued to the Returning office	It is a document where Only certified copies admissible as per Rule 93 of the Conduct of Election Rules, 1961 read with section 65(e) of Indian Evidence Act,1872.
15	64	020521	Letter issued by District Election officer bearing no.R.C.No.19 000/2020/B2 to Returning officer	Only Photocopy was issued to me	Election Petitioner is not a party and he has not stated how he has received the document.
16	65	020521	Form 17-C Part-II Result of Counting 179- Viralimalai Assembly Constituency	Only Photocopy was issued to me	It is a document where Only certified copies admissible as per Rule 93 of the Conduct of Election Rules, 1961 read with section 65(e) of Indian Evidence Act,1872.
17	66	020521	Letter given by Dravida Munnetra Kazhagam to Chief Election Commission	Since the original was given to the CEO, the DMK party retained Only Photocopy was given to me.	1. Election Petitioner is not the author of the document, he cannot mark the document. 2. No acknowledgment has been filed.
18	67	020521	Election	Since the	

<i>S. NO</i>	<i>Doc.No . in the petition</i>	<i>Document Date</i>	<i>Document Description</i>	<i>Reason why Photocopy is produced</i>	<i>Objections</i>
			Certificate to C.Vijaybaskar	original was given to the 1 st respondent, I have filed a Photocopy	
19	69	030521	Letter given by the Petitioner to District Election Officer	only a photocopy was retained by me since the Original was given to the DEO	It is a document where Only certified copies admissible as per Rule 93 of the Conduct of Election Rules, 1961 read with section 65(e) of Indian Evidence Act,1872.
20	70	030521	Letter given by the returning officer bearing No. Rc.A5/949/2021 to chief Electoral Officer	The original letter was sent by RO to CEO hence I have only a photocopy	1. Election petitioner is not a party to the document, not stated how he got the document. 2. It is a document where Only certified copies admissible as per Rule 93 of the Conduct of Election Rules, 1961 read with section 65(e) of Indian Evidence Act,1872.
21	71	030521	Complaint given by K.K. Chellapandiyan to District Election Officer	only a photocopy was retained by me since the Original was given to the DEO	1. Election Petitioner is not the author of the document, he cannot mark the document. 2. No

<i>S. NO</i>	<i>Doc.No . in the petition</i>	<i>Document Date</i>	<i>Document Description</i>	<i>Reason why Photocopy is produced</i>	<i>Objections</i>
					acknowledgment has been filed.
22	72	030521	Proceeding of the Returning Officer bearing No. Rc.B2/19000/2020	only a photocopy of the proceedings was given to me	It is a document where Only certified copies admissible as per Rule 93 of the Conduct of Election Rules, 1961 read with section 65(e) of Indian Evidence Act,1872.
23	74	050521	Complaint given by M. Chelladurai to District Election officer,	only a photocopy was retained by me since the Original was given to the DEO	It is a document where Only certified copies admissible as per Rule 93 of the Conduct of Election Rules, 1961 read with section 65(e) of Indian Evidence Act,1872. No acknowledgment has been filed.
24	75	040621	Letter given by the petitioner to the Returning officer	The originals were sent to the addressee and only a Xerox was retained by me.	It is a document where Only certified copies admissible as per Rule 93 of the Conduct of Election Rules, 1961 read with section 65(e) of Indian Evidence Act,1872.
25	76	040621	Letter given by the petitioner to the District Collector	The originals were sent to the addressee and only a Xerox was retained by me.	It is a document where Only certified copies admissible as per Rule 93 of the Conduct of Election Rules, 1961 read with section 65(e) of Indian Evidence Act,1872.
26	77	040621	Letter given	The originals	It is a document where

<i>S. NO</i>	<i>Doc.No . in the petition</i>	<i>Document Date</i>	<i>Document Description</i>	<i>Reason why Photocopy is produced</i>	<i>Objections</i>
			by the petitioner to the Election Observer (Accounts)	were sent to the addressee and only a Xerox was retained by me.	Only certified copies admissible as per Rule 93 of the Conduct of Election Rules, 1961 read with section 65(e) of Indian Evidence Act,1872.
27	78	040621	Letter given by the petitioner to the Chief Electoral officer	The originals were sent to the addressee and only a Xerox was retained by me.	It is a document where Only certified copies admissible as per Rule 93 of the Conduct of Election Rules, 1961 read with section 65(e) of Indian Evidence Act,1872.
28	79	040621	Letter given by the petitioner to the Chief Election Commissioner of India	The originals were sent to the addressee and only a Xerox was retained by me.	It is a document where Only certified copies admissible as per Rule 93 of the Conduct of Election Rules, 1961 read with section 65(e) of Indian Evidence Act,1872.

Tabular Column B:-

<i>SL. No</i>	<i>Document No.</i>	<i>Date</i>	<i>Document Description</i>	<i>Reason why electronic evidence is produced</i>	<i>Objection</i>
1.	11	26.02.2021	Election Notification	Notification was uploaded on the website of the Government	The Election Petitioner has not stated who had downloaded, who has printed and has

<i>SL. No</i>	<i>Document No.</i>	<i>Date</i>	<i>Document Description</i>	<i>Reason why electronic evidence is produced</i>	<i>Objection</i>
					not named any device.
2	16	15.03.2021	Form 26 filed by he 1 st Respondent	Original was filed before the Returning officer, the scanned copy was uploaded by the ECI onto its website	The Election Petitioner has not stated who had downloaded, who has printed and has not named any device.
3	19	23.03.2021	FIR in Crime No.62 of 2021 Illupur Police Station	FIR was mot furnished, copy was downloaded from the official website	The Election Petitioner has not stated who had downloaded, who has printed and has not named any device.
4	21	28.03.2021	Second Randomization in- Poll Report containing Randomization numbers given by 25 th Respondent to the controlling units	A copy of the report was uploaded to the ECI website, from where one Dhantayuthapani downloaded the same and transferred to the petitioner's computer and the petitioner printed out the same	Petitioner has not stated who had downloaded, who has printed and has not named any device.
5	27	040421	Photograph showing the 1 st Respondent and his party workers occupying space allotted to the Petitioner for	Photograph taken by my photographer Mr.Venkatesan, transferred to my computer from which it was printed.	The Election petitioner is not the author or creator of the Electronic record.

<i>SL. No</i>	<i>Document No.</i>	<i>Date</i>	<i>Document Description</i>	<i>Reason why electronic evidence is produced</i>	<i>Objection</i>
			canvassing		
6	28	040421	Complaint given by M.Chelladurai to District Election Officer, Viralimalai constituency	Only a photograph of the complaint was taken by me since there was no time to take a photocopy. The said photo was transferred to my computer and printed	The Election petitioner is not the author or creator of the Electronic record.
7	56	070421	Complaint given by K.K. Chellapandiyan to District Election Officer, Viralimalai constituency	Only a photograph of the complaint was taken by me since there was no time to take a photocopy. The said photo was transferred to my computer and printed	The Election petitioner is not the author or creator of the Electronic record.
8	57	080421	Suspension order of Sakthivel Panchayat Clerk	Since the order was not issued to me, the same was scanned and printed by me	The Election petitioner is not the author or creator of the Electronic record.
9	59	020521	Photographs of Tampered Controlling units	Photographs were taken by another candidate Mr.Manikandan transferred to my computer from which they were printed	The Election petitioner is not the author or creator of the Electronic record.
10	68	020521	Photographs of Control units without seal and tag	Photographs were taken by another candidate Mr.Manikandan	The Election petitioner is not the author or creator of the Electronic

<i>SL. No</i>	<i>Document No.</i>	<i>Date</i>	<i>Document Description</i>	<i>Reason why electronic evidence is produced</i>	<i>Objection</i>
				transferred to my computer from which they were printed	record.
11			DVD Containing Photographs and Video of Wall Painting by the 1 st respondent and his agent under his authorization in 179 Viralimalai Constituency		The Election Petitioner is not the author or creator of the Electronic record.
12			DVD containing photographs of Govt. Officers Sakthivel and Sebastian canvassing for the 1 st respondent dressed in AIADMK party attire and video of Govt. Servant Sakthivel canvassing votes along with the 1 st respondent in the campaign van of the 1 st respondent		The Election Petitioner is not the author or creator of the Electronic record.

10.I have carefully considered the arguments advanced and the materials on record.

11.Section 62 of the Indian Evidence Act, 1872 deals with primary evidence. This provision would indicate that the documents in original have to be produced for inspection of the Court.

12.However, there would be occasions when the originals are not available with the witness or with the party relying on the said documents. Therefore, secondary evidence could be produced. But, there are certain conditions when alone, such secondary evidence can be produced.

13.Section 63 of the Indian Evidence Act, 1872, speaks about secondary evidence. It is as follows:

“63.Secondary Evidence:- Secondary evidence means and includes-

(1)Certified copies given under the provisions hereinafter contained;

(2)Copies made from the original by mechanical processes

which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) Copies made from or compared with the original;

(4) Counterparts of documents as against the parties who did not execute them;

(5) Oral accounts of the contents of a document given by some person who has himself seen it.”

14.The other relevant provision is Section 65 of the Indian Evidence Act, 1872. Section 65 of the Indian Evidence, 1872 is as follows:

“65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases: —

(a) when the original is shown or appears to be in the possession or power — of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

15.In the instant case, the reasons for not producing the original had been given, and the objections have also been stated. When broadly examined, it had also been placed on record by the learned counsel for the petitioner, that the photocopies of documents have been now produced only to facilitate trial to proceed and that the originals which are in possession of the Returning Officer would be produced when the Returning Officer is summoned to give evidence.

16.Secondary evidence had been produced primarily with respect to complaints given on behalf of the petitioner and xerox copies being retained. The original complaints would be available with the Returning Officer. There are also documents relating to Form-17C, of which copies have been marked and it had been stated that the originals would be summoned from the office of the Returning Officer.

17.One fact which must be stated is that all these documents are part of official records. The records are available with the Returning Officer. Therefore, a caveat can always be placed that, if the original / certified copies of any of the documents produced as secondary evidence are not produced during the course of trial through any other witness,

then the secondary evidence now produced would be straight away rejected.

18.However, if there are further witnesses to be examined on behalf of the petitioner and the original documents are summoned through those witnesses, for instance, the Returning Officer, then, marking of the xerox copies would pale into insignificance and the originals can be relied on by all the parties and arguments can be advanced about their relevancy.

19.Even though specific objections have been given with respect to each one of the documents and had been stated above, I would place an obligation on the part of the counsels to raise those objections during the course of arguments if on completion of trial. If it is established that sufficient explanation had not been given for non-production of the original documents or if the original documents had not been produced through any other witness, then the documents marked as secondary evidence would be rejected. Therefore, additional effort will have to be put in by the petitioner to ensure that the originals of the documents now marked as secondary evidence are produced or satisfactory evidence

relating to the reasons for non-production of the originals are adduced during the course of evidence.

20.The consideration of the documents would depend on the explanations given and both sides would be given an opportunity to advance arguments and present their case at that appropriate time. At this stage, I would permit marking of the secondary evidence subject to the objections raised, which had also been noted.

21.Tabular Column B contains a list of documents which have been electronically generated and for which requirement to produce certificates under Section 65B of the Indian Evidence Act, 1872 is required. The manner in which these documents can be taken on record is no longer res-integra in view of the two judgments of the Hon'ble Supreme Court in *Arjun Panditrao Khotkar V. Kailash Kushanrao Gorantyal and others* reported in (2020) 7 SCC 1, and *Mohd. Arif Alias Ashfaq V. State (NCT of DELHI)* reported in (2023) 3 SCC 654. The Hon'ble Supreme Court had clarified the earlier judgments and finally issued a clarification in (2020) 7 SCC 1, *Arjun Panditrao Khotkar* referred *supra* which had been reiterated in (2023) 3 SCC 654, *Mohd. Arif* referred *supra*. The relevant portion is as follows:

“22. The last decision on the point is a three-Judge Bench decision of this Court in Arjun Panditrao Khotkar [Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1 : (2020) 4 SCC (Civ) 1 : (2020) 3 SCC (Cri) 1 : (2020) 2 SCC (L&S) 587] which was rendered on a reference to a larger Bench because of the observations in Shafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC (Civ) 346 : (2018) 1 SCC (Cri) 860] . The Bench concluded in Arjun Panditrao [Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1 : (2020) 4 SCC (Civ) 1 : (2020) 3 SCC (Cri) 1 : (2020) 2 SCC (L&S) 587] as under : (Arjun Panditrao case [Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1 : (2020) 4 SCC (Civ) 1 : (2020) 3 SCC (Cri) 1 : (2020) 2 SCC (L&S) 587] , SCC p. 62, para 73).

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73.2. The clarification referred to above is that the required certificate under Section 65-B(4) is unnecessary if the original document itself is produced. This can be

done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where the “computer” happens to be a part of a “computer system” or “computer network” and it becomes impossible to physically bring such system or network to the court, then the only means of providing information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). The last sentence in para 24 in Anvar P.V. v. P.K. Basheer [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] which reads as ‘... if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act ...’ is thus clarified; it is to be read without the words ‘under Section 62 of the Evidence Act, ...’. With this clarification, the law stated in para 24 of Anvar P.V. v. P.K. Basheer [Anvar P.V. v. P.K.

*Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 :
(2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] does
not need to be revisited.”*

22.The learned counsel for the petitioner stated that further evidence would be adduced about the source of the electronic documents.

23.Serious objections had been raised by the learned counsel for the 1st respondent to the photographs produced, but again, I would point out that it also depends on the nature of oral evidence submitted and which can always be tested during cross-examination.

24.Therefore, once again placing a caveat that merely because documents had been given exhibit numbers, it does not automatically mean that they stand proved in manner known to law, I would permit marking of the documents and receiving certificates under Section 65B of the Indian Evidence Act, 1872.

25.In view of the above discussion, again placing a caveat that unless the original documents are produced through further witnesses or credible evidence is adduced, to explain absence of original documents and to explain circumstances under which electronic evidence are produced, the documents now marked will be taken into consideration, otherwise they will stand rejected, these applications are allowed. No costs.

30.10.2023

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Index : Yes / No

Neutral Citation : Yes / No

Speaking order : Yes / No

O.A.Nos.773 & 774 of 2023 in E.P.No.3 of 2021

C.V.KARTHIKEYAN, J.
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Pre-delivery order made in

O.A.Nos.773 & 774 of 2023
in
E.P.No.3 of 2021

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