



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

922 WRIT PETITION NO. 4076 OF 2024

Pravin S/o. Bansidharrao Ikhe,
Age 40 years, Occu. Service,
R/o. A-304, Orchid Towers,
S.No. 114/5, Baner Road,
Pune, District Pune.

...Petitioner
(Orig. Petitioner)

VERSUS

Mrs. Pooja W/o. Pravin Ikhe Patil,
Age 40 years, Occu. Household,
R/o. C/o. Balasaheb Shinde,
Sairam Nagar, Hatlai Road,
Dharashiv, Tal. & Dist. Dharashiv.

...Respondent
(Orig. Respondent)

...
Mr. S.B. Solanke, Advocate for the petitioner.

...

CORAM : ARUN R. PEDNEKER, J.
Dated : April 19, 2024

ORDER :-

- 1) Heard **Mr. S.B. Solanke**, learned counsel for the petitioner.
- 2) By way of present writ petition, the petitioner is challenging the impugned orders dated 25.10.2023 and 23.1.2024 passed by the learned Judge, Family Court, Osmanabad, below Exhs. 52 and 55, respectively in Petition No. A-216/2021 filed by the petitioner for divorce.
- 3) The divorce petition is at the stage of the evidence of the respondent/wife. During the cross examination of the respondent/wife, the petitioner/husband wanted to show a video clip to the respondent/wife and therefore, the application at Exh. 52 was filed by the petitioner for

production of the electronic record i.e. pen drive. The said application was rejected by the Family Court vide order dated 25.10.2023 by observing that the contents of the pen-drive were nowhere pleaded by the petitioner and the said evidence is without pleading.

4) Again the petitioner approached the Family Court by filing application below Exh. 55 with a specific prayer that the petitioner may be permitted to show a video recording from the pen drive to refresh the memory of the witness and ask further questions to the respondent/wife during her cross examination. The said application was again rejected by the Family Court for the same reason. Hence, the present writ petition is filed to challenge the above impugned orders at Exhs. 52 and 55.

5) In paragraphs Nos. 11 and 12 of the impugned order, dated 25.10.2023 the Trial Court has held as under :-

"11. The petitioner in person is cross-examining the respondent. During cross-examination, he has suggested the respondent that she was repeatedly giving threats of suicide to the petitioner, she told him during discussion that she was saying to do suicide under tension and he prepared video of discussion with the consent of her. Said suggestions are clearly denied by the respondent. She denied of giving threats of suicide to the petitioner. She flatly denied of saying the petitioner of giving threats under tension. Further, flatly denied of making video by the petitioner about their discussion with her consent.

12. The petitioner wants to produce pen-drive during cross-examination of the respondent and wants to confront contents in it from the respondent. As there are no pleadings in Exh. 1 as well as no such evidence by the petitioner, the contents in pen-drive are surprising on the part of the respondent. The petitioner has smartly avoided evidence about audio and video clips of conversation between him and

the respondent and thereby avoided the cross-examination on that point at the hands of advocate of the respondent. Further, he has cleverly avoided to examine his close friend Shailesh Ayanile and bring on record that the data sent by the petitioner to his Laptop is missing. Thereby, the respondent lost opportunity to cross-examine to the petitioner and his witness on the point of audio and video clips. At the flag end of the trial the petitioner is trying to bring on record the evidence which is surprising on the part of the respondent and that too without pleadings. The petitioner is trying to shift his burden of proving his case on the shoulder of the respondent. It is not expected to prove the evidence, without pleading, from the mouth of the respondent. As the respondent is denying of making video clips of conversation between her and the petitioner about giving threats of suicide under tension, it is not just and proper to allow production."

6) As regards, Exh. 55, the Family Court held that it has already decided Exh. 52 and the order at Exh. 52 covers the issue of Exh. 55 and dismissed the same.

7) The law on production of the document directly at the stage of cross examination is considered by the judgment of this Court with reference to Order VII, Rule 14 (4), Order VIII, Rule 1-A (4)(a) and Order XIII, Rule 1(3) of C.P.C.. Before I deal with the judgments of this Court and Hon'ble Supreme Court, for ready reference, the above provisions are quoted below :-

Order VII, Rule 14 (4) of C.P.C. is as under :-

14. Production of document on which plaintiff sues or relies.-

(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it

in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2)

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.

Order VIII, Rule 1-A (4)(a) of C.P.C. is as under :-

1-A Duty of defendant to produce documents upon which relief is claimed or relied upon by him :-

(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2)

(4) Nothing in this rule shall apply to document-

(a) produced for the cross examination of the plaintiff's witness, or

(b) handed over to a witness merely to refresh his memory.

Order XIII, Rule 1 (3) of C.P.C. is as under :-

1. Original documents to be produced at or before the settlement of issues-

(1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed alongwith plaint or written statement.

(2)

(3) Nothing in sub-rule (1) shall apply to document -

- (a) produced for the cross-examination of the witness of the other party; or
- (b) handed over to a witness merely to refresh his memory."

8) The Division Bench of this Court in the case of **Mohammed Abdul Wahid Vs. Nilofer wd/o. Dr. Mohammad Abdul Salim** reported in 2021 (3) **Mh.L.J. 626, (Nagpur Bench)** considered the provisions of Order VII, Rule 14(4), Order VIII, Rule 1-A and Order XIII, Rule 1(3) of C.P.C. in view of conflicting views of the learned Single Judges of this Court in the case of **Vinayak M. Dessai Vs. Ulhas N. Naik and Ors.** reported in 2018 (2) **Mh.L.J. 348** and in the case of **Purushottam s/o. Shankar Ghodgaonkar Vs. Gajanan s/o. Shankar Ghodgaonkar and ors.,** reported in 2012 (6) **Mh.L.J. 648**, on the issue, whether the document can be directly introduced for cross-examination of the party or only to a witness of a party, when such document was not pleaded or exhibited. The learned Single Judges of this Court in the above judgments had expressed conflicting views on the aspect of directly using the document for cross examination of a witness of the party or whether a witness includes the party. However, there was no conflict as regards directly producing document for cross examination of a witness, without the document being pleaded or exhibited. The Division Bench of this Court in the case of **Mohammed Wahid** (supra) had formulated the issues and also answered them as under :-

"(1) Whether a party to a suit i.e. plaintiff/or defendant is also a witness and the provisions of Order VII Rule 14, Order VIII Rule 1-A (4) (a) and Order XIII Rule 1 (3) (a) of

A party to a suit (plaintiff/defendant) cannot be equated with a witness. The provision of Order VII, Rule 14(4), Order VIII, Rule 1-A(4) which includes Rule 1-A(4)(a) and

the Civil Procedure Code need to be interpreted and applied by equating "party" with a "witness" ?

Order XIII, Rule 1(3) which includes Rule 1(3)(a) of Civil Procedure Code are not applicable to a party, who enters the witness box to tender evidence in his own cause.

The provision are applicable to a witness alone.

(2) Whether documents can be directly produced at the stage of cross-examination of a party and/or a witness to confront him/her without seeking any prior leave of the Court under Order VII Rule 14 (4), Order VIII Rules 1 (A) (4) (a) and Order XIII Rule 1 (3) (a) of the Civil Procedure Code ?

Document can be directly produced at the stage of cross-examination of a witness, (who is not a party to the suit), to confront the witness for refreshing his memory, under Order VII, Rule 14(4), Order VIII, Rule 1-A(4) and Order XIII, Rule 3 of Civil Procedure Code without seeking prior leave of the Court.

(3) Whether the observations made in the judgment in the cases of Purushottam s/o Shankar Godegaonkar (supra) and Vinayak M. Dessai (supra), to the effect that permitting production of documents directly at the stage of cross-examination of a witness and/or a party to a suit would amount to springing a surprise and hence, it is impermissible, are correct in the light of the plain reading of the aforesaid provisions and if accepted it would lead to whittling down the effectiveness of cross-examination of a witness and/or a party ?”

Since we have held that a party cannot be equated with a witness in the matter of applying the provisions of VII, Rule 14(4); Order VIII, rule 1-A(4) and Order XIII, Rule 3 of Civil Procedure Code, the observations made in Purushottam s/o. Shankar Ghodgaonkar (supra) and Vinayak M. Dessai (supra), are correct and would not lead to whittling down the effect of cross-examination of a witness.

Even if the witness was a party to the suit, what has been held in Purushottam s/o. Shankar Ghodgaonkar (supra) and Vinayak M. Dessai (supra) would equally hold good.

9) The above judgment of Division Bench of this Court in the case of **Mohammed Wahid** was considered by the Hon'ble Supreme Court in appeal in the case of **Mohammed Abdul Wahid Vs. Nilofer and Anr. Reported in (2024) 2 SCC 144** and while dealing with the issues formulated, the Hon'ble

Supreme Court considered the two questions, which are as under :-

"10. In the above backdrop, the questions we have been called upon to adjudicate on are:-

10.1. (a) Whether under the Code of Civil Procedure, there is envisaged, a difference between a party to a suit and a witness in a suit? In other words, does the phrase plaintiff's/ defendant's witness exclude the plaintiff or defendant themselves, when they appear as witnesses in their own cause?

10.2 (b) Whether, under law, and more specifically, Order 7 Rule 14; Order 8 Rule 1-A; Order 13 Rule 1, etc. enjoin the party undertaking cross-examination of a party to a suit from producing documents, for the purposes thereof, by virtue of the use of the phrase(s) plaintiff/defendant's witness or witnesses of the other party, when cross examining the opposite party?"

10) The Hon'ble Supreme Court in the case of Mohammed Wahid (supra), at para 26 of the judgment has answered the first question, as under :-

"26. Having arrived at the conclusion as above, that the provisions of the Code as also the Evidence Act do not differentiate between a party to the suit acting as a witness and a witness otherwise called by such a party to testify."

11) While dealing with the second question in above case, the Hon'ble Supreme Court has observed at para 37, 39 and 40 as under :-

"37. It is settled law that what is not pleaded cannot be argued, as for the purposes of adjudication, it is necessary for the other party to know the contours of the case it is required to meet. It is equally well settled that the requirement of having to plead a particular argument does not include exhaustively doing so.

38.

39. A reading of the judgments above would imply that substance is what the courts need to look into, and therefore, in reference to the production of documents, in

the considered view of this court, so long as the document is produced for the limited purpose of effective cross-examination or to jog the memory of the witness at the stand is not completely divorced from or foreign to the pleadings made, the same cannot be said to fly in the face of this established proposition.

40. Save and except the cross-examination part of a civil suit, at no other point shall such confrontation be allowed, without such document having accompanied the plaint or written statement filed before the court. For this purpose, reference be made to Order 7 Rule 14(4) (this Rule speaks of the plaintiff necessarily listing in his plaint and, producing before the court, the documents upon which they seek to place reliance, in support of his claim. Sub-rule (4) exempts from this obligation documents produced for the limited purpose of cross-examination or to jog the memory of a witness), Order 8 Rule 1A(4)(a) (this Rule speaks of the defendant necessarily listing in his written statement and, producing before the court the documents upon which they seek to place reliance, in defense of his claim for set-off or counterclaim. Sub-rule (4) exempts from this obligation documents produced for the limited purpose of cross-examination or to jog the memory of a witness) and Order 13 Rule 1(3) (this Rule speaks of either party or their pleaders obligatorily producing, post the settlement of issues in a suit, the documentary evidence upon which reliance is placed. Sub-rule (3) exempts from this obligation documents produced for the limited purpose of cross-examination or to jog the memory of a witness), all three of which, while dealing with the production of documents, by the plaintiff, defendant and in general, respectively, exempt documents to be produced for the limited purpose of cross-examination or jogging the memory of the witness."

12) This Court in the case of **Upper India Couper Paper Mills Co. Ltd. Vs. M/s. Mangaldas and Sons**, reported in 2004 (4) Mh.L.J. 992 has made observations with regard to the purpose for which a party is permitted to produce the documents directly for cross examination of a witness without producing it in the pleadings. The relevant paragraph Nos. 7, 8 and 9 of the

judgment are reproduced below :-

"7. On plain language of this provision, it is amply clear that if the defendant is relying upon any document in his possession or power, "in support of his defence", he is obliged to enter such document in a list, and to produce it in Court when the written statement is presented by him, and simultaneously deliver the document and a copy thereof, to be filed with the written statement. Clause (3) postulates that if the document is not so produced, even such document can be received in evidence on behalf of the defendant at the hearing of the Suit "with the leave of the Court". However, as in the present case, if the defendant was using any document, not already disclosed even if it was in his possession or power, only to confront the Plaintiff's witness during the cross-examination, it will not be obligatory for the defendant to furnish advance copy of such document. This position is reinforced by the expansive language of Clause (4) of Rule 1-A. It provides that "nothing in this Rule" shall apply to the document produced for the cross-examination of the plaintiff's witness.

8. Such provision has been made so as to ensure that the potency or effectiveness of cross-examination of confronting the witness is not whittled. In other words, if the document was furnished in advance there is always a possibility of witness modulating his version. If that happens, the efficacy of cross-examination is bound to be affected. As is contended before this Court, the petitioners/defendants are wanting the subject documents to be produced for the limited purpose during the cross-examination to confront the plaintiffs' witness. The petitioners are, therefore, justified in contending that the petitioners were not obliged to furnish advance copies thereof to the plaintiffs' witness.

9. As mentioned earlier, this petition succeeds mainly because of the statement made on behalf of the petitioners before this Court that the subject documents will be used by the petitioners/defendants only for the purposes of confronting the plaintiffs' witness during the cross-examination and not in support of their defence."

13) The Hon'ble Supreme Court in the above judgment of **Mohammed**

Abdul Wahid (supra) has held that it is not a mandate of Order VII, Rule 14, Order VIII, Rule 1 (A) and order XIII, Rule 1(3)(a) of the CPC that the plaintiff or defendant could not seek to produce document directly during the cross-examination of a witness when document goes to the root of the matter and when the document is directly introduced in the cross examination of the witness, the same document can be produced for the limited purpose of cross examination or jogging the memory of a witness. Thus, in the instant case, the Family Court has completely misread the position of law as regards the production of document for the purpose of cross examination of the witness or to jog the memory of the witness. Documents can be directly produced for cross-examination of party without exhibiting the same for the limited purpose as explained above.

14) The purpose of a trial is to find out the truth and for effective cross examination, a party may make a choice of suddenly introducing the document at the stage of cross examination for it's impact. But, in doing so may loose opportunity in proving the document in ordinary course and may suffer consequences of the document being not admitted by the opposite party/witness in cross examination. However, the party is entitled to take the risk and may face consequences as noted above.

15) The Trial Court has erred in appreciating the legal position that a document can be directly produced for cross-examination without exhibiting the document in pleading. However, notwithstanding the fact that the trial Court has completely misunderstood the legal position as regards introduction of a document directly at the stage of cross examination without exhibiting the same in pleading, I propose not to permit the

document to be used for cross-examination for the following reasons.

16) The application for production of document, which is a pen-drive containing audio and video clips, for the purpose of cross examination is accompanied by certificate under section 65-B of Indian Evidence Act of one Shailesh Balaji Ayanile. In the application, it is contended as under :-

"1. That, the matter is pending for evidence of non-applicant and the applicant is taking cross examination of non applicant. It is on today's board.

2. That the applicant is having a video of non-applicant, wherein she has admitted that, she has an intention to commit suicide. Therefore, when the applicant asked the question to the non-applicant that, when she was cohabiting with applicant, she threatened to applicant she will commit the suicide, at that time the non applicant flatly refused the said fact. But the applicant has preserved the Video of the non-applicant in Sandisk Ultra 16 GB Pen Drive, where she admitted that, she has an intention to commit suicide. Therefore, the permission be given to show the said preserved video from the pendrive of applicant and ask further question to the non applicant for refresh her memory."

17) The application is accompanied with the pen drive and affidavit under section 65-B of Mr. Shailesh Ayanile, wherein he has stated as under :-

"I know the Pravind Bansidhar Ikhe personally from the year 2012, he is my close friend. Now he resides at Pune. In the year 2016, he had been to the latur and met me and discussed about his family dispute with me. At that time I own the HP company laptop for my personal use, therefore, Pravin Ikhe requested me to preserve his personal data about the communication with her wife, so he had sent his some peersonal data i.e. several audio and video clips from his mobile to my laptop by way of Bluetooth. I have preserved the said data on my laptop. In the year 2019 Pravin Ikhe contacted me and said that his personal data, which had been transferred to my laptop corrupted from his mobile as well as laptop and requested to find-out the said

data in my laptop. Thereafter, I searched various times the said data, but it could not found.

On 10.09.2023 out of the several video clips, two video clips were found in my old laptop. Thereafter, immediately I informed the said fact to my friend Pravin Ikhe, so Pravin Ikhe also immediately came at Latur. The said two clips sent in the pen drive of Sandisk company, which is having 16 gb data storage, so the said two clips are preserved in said Sandisk pen drive. The computer data output and pen-drive data are true and correct and without any unauthorized interference or tampering. This is to further certify that to the best of my knowledge and information that the data, which is preserved in the said pen-drive is appropriately derived from the laptop. Safeguards is adopted by me to protect the data. Safeguards are available to retrieve data i.e. lost due to system failure or other reason.

Throughout this entire period the laptop was operating properly and its any electronic record was not effected and all the records are accurate.

That, the said data has been preserved as per the instructions of Pravin Ikhe. It is further certified that to the best of my knowledge and information that the laptop is operated properly at the material time and I have provided with all the relevant data from laptop to the pen drive correctly. Being the lawful owner regular user of my laptop I am empowered to issue this certificate."

18) The certificate under section 65-B is given by Shailesh Balaji Ayanile that the petitioner has recorded the video on his mobile and the data from mobile is transferred to the laptop of Shailesh Ayanile by way of bluetooth and Shailesh Ayanile has preserved the said data on his laptop from the year 2016. From the statement, it is not known as to how the document was recorded. If the document i.e. video is recorded on the mobile of the petitioner and thereafter, he has transmitted the video on the laptop of Shailesh Ayanile, it is necessary that the document has to be certified under

section 65-B of the Evidence Act by the person who has recorded the said document, in the mobile, as to how he has recorded the video, how he has preserved the document in the mobile and how he has transmitted the data from the mobile to the laptop. Affidavit of Shailesh Ayanile, pertains to the data on the laptop on which the video is stored and thereafter reproduced on the pen drive. The document/certificate does not meet the requirement of section 65-B of Indian Evidence Act. The document so produced is speculative and cannot be used for cross examination of the respondent.

19) As regards production of electronic document, sections 22A, 59, 65A, 65B of the Evidence Act are relevant and reproduced below :-

"22A. When oral admission as to contents of electronic records are relevant. -- Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question.

59. Proof of facts by oral evidence.- All facts, except the contents of documents or electronic records, may be proved by oral evidence."

65-A. Special provisions as to evidence relating to electronic record.--The contents of electronic records may be proved in accordance with the provisions of section 65B.

65-B Admissibility of electronic records.-(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:--

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether--

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive

operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, --

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it. (emphasis added)

(5) For the purposes of this section,

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment; --

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those

activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation. -- For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process."

20) Admissibility of the electronic record depends upon satisfaction of the conditions mentioned in section 65-B (2), which are as under :-

(i) the computer output, the electronic record containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(ii) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(iii) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(iv) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

21) Section 65-B (4) provides that in any proceedings where it is desired

to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

22) In the instant case, the document so produced i.e. pen drive is not supported by the certificate as contemplated under Section 65-B(4) and thus, does not meet the requirement of the above sections of Evidence Act and is not an admissible document to be used for the purpose of cross examination of the respondent. Since the video is recoded on the mobile of

the petitioner, the petitioner has to certify the same by giving necessary details of mobile and has how he has recorded the same. The petitioner has to also certify how he has preserved the video before the transmission of the video on the laptop. Certificate of his friend alone, who owns the laptop is not a certificate meeting the requirements of section 65-B(4). Certificate of his friend is also required for storage of video on laptop, preservation and for transmission on pen-drive.

23) The video on pen-drive is merely a speculative document, veracity of which cannot be confirmed. The document used for the purpose of cross-examination has to be relevant and admissible in evidence.

24) Reference with regard to the relevancy of the document produced directly for cross-examination of the witness can be made to the judgments of this Court in the case of **Pandharinath Laxman Bhandari Vs. Shri Bharati Trimbak Bhandari, 2021 SCC OnLine Bom 447**. Relevant observations are made at para 7 and 8, which are as under :-

"7. The main object of the cross-examination is to bring out the falsity and to find out the truth and further to weaken qualify or destroy the case of Opponent and to establish the own case through Opponents' witness. Thus objects are to impeach the accuracy, credibility and general value of the evidence given in-chief, to sift the facts already stated by the witness, to detect and expose discrepancies or to illicit suppressed act, which will support the case of cross-examining party. The exercise of this right is regarded and one of the most efficacious for recovery of truth. Provisions of Section 137 of the Indian Evidence Act, 1872 empowers and Section 146 to 150, regulates cross examination of witness. Confronting witness, with a document is permissible to test veracity of witness; under Section 146 of the Evidence Act. Though the range of cross-examination is

unlimited, it must relate to relevant facts. Thus 'relevancy of document', to which witness is confronted with, is a essential condition. (Emphasis supplied)

8. Thus, to be stated that the provisions of Order-7 Rule-14(4), Order-8 Rule-1 (A)(4) and Order-13 Rule-3(a) of the CPC are exceptions to the Rules, regulating the production of documents by the Plaintiffs and Defendants alongwith the plaint and written statement. To achieve the desired result. While witness of adverse party is examined, if the party to the suit is not permitted to confront the witness with a document, which has not been produced with the pleadings, adverse party cannot test the veracity or impeach the credit of the witness. Thus, the legislation in its wisdom carved out aforesaid exceptions. Thus, in view of explicit provisions of CPC, it cannot be held that the document cannot be produced or shown, for the first time to the witness during the cross-examination, though it was not produced with the pleadings. The first question is answered accordingly."

25) In the case of **Subhash Chander Vs. Bhagwan Yadav, reported in 1010 (114) DRJ 306**, the Hon'ble Delhi High Court, at para 12 has observed that the Court need to be cautious when the documents are produced at the stage of cross examination and has held that the document has to be 'relevant to the witness'. Para 12 of the said judgment is as under :-

"12. I may however put a line of caution over here. It is often found that a party which has otherwise failed to file documents at the appropriate stage, attempts to smuggle in the documents in the evidence of the witness of the adversary by putting the documents to the witness whether relevant to that witness or not. The court should be cautious in this regard. Only those documents with which the witness is concerned and/or expected to know or answer ought to be permitted to be put to the witness in the cross examination. If other documents with which the witness is not concerned are confronted only in an attempt to have the same filed and to thereafter prove the same, the court would be justified in clarifying that the document is taken on record only for the purpose of cross examination and the producing party would

not be entitled to otherwise prove the same, having not filed it at the appropriate stage. "

26) When the document is used at the stage of cross examination without producing the same in the pleading, the document produced has to be relevant and also meet the criteria of admissibility. An inadmissible and speculative document cannot be used for cross-examination of the witness as the witness may be incapable to answer the same and an inadmissible document will be read in evidence. For the above reasons stated, the document/video in absence of appropriate certificate as contemplated under section 65-B of the Evidence Act, is not permitted to be produced for cross examination or for refreshing the memory of a witness.

27) In the result, the writ petition is dismissed *in-limine*.

(ARUN R. PEDNEKER, J.)

ssc/