

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 7410 OF 2023

Mohammad Tariq Mohammad Habib Saudagar, Aged about 53 years, Occ. Lawyer, R/o Behind Hutatma Smarak, Kannamwar Ward, Desaiganj, Tah. Desaiganj, Dist. Gadchiroli	<u>PETITIONER</u>
<u>VERSUS</u>	
Mohammad Arrif Abdul Waddu Patel, Aged about 56 years, Occ. Business, R/o Patel Lawn, Gandhi Ward, Bramhapuri Road, Desaiganj, Tah. Desaiganj, Dist. Gadchiroli	<u>RESPONDENT</u>

Mr. R.R. Dawda, Advocate for Petitioner

Mr. S.I. Khan, Advocate for Respondent

CORAM : BHARAT P. DESHPANDE, J.

DATE : 5th MARCH, 2024

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard both the parties.

2. The short question involved in this petition is the objection raised by the respondent / defendant regarding certificate of Section 65-B of the Indian Evidence Act, which has been upheld by the learned trial Court.

3. The petitioner submits that he is the plaintiff, whereas the respondent is defendant. The suit is filed for recovery of professional charges. The petitioner is trying to prove the communication between him and the respondent by producing the documents such as Whatsapp messages, etc. which are stored in his mobile phone and which he transferred to his personal computer for the purpose of taking print outs. The petitioner along with his evidence in affidavit placed on record such documents together with certificate under Section 65-B of the Indian Evidence Act. The defendant raised an objection about the said certificate, which the learned trial Court considered that such certificate is not proper and that the petitioner cannot be considered as responsible official to sign the certificate.

4. For the purpose of reference, Section 65-B of the Indian Evidence Act, 1872, is quoted below :

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 of 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 by virtue of this section, a certificate doing any a statement in evidence 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 sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(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 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 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.”

Admittedly, such provision was incorporated in Chapter V which deals with the documentary evidence. Section 65 of the Act deal with secondary evidence relating to the document, which could be produced in evidence in the Court of law. Specific provision was incorporated in view of the Information Technology Act and the Rules thereunder so as to

produce the electronic documents as a proof for deciding the issues involved in the suit.

5. The plaintiff in the plaint as well as in the affidavit disclosed on oath that he is using the mobile phone No. 8788087048 with the Whatsapp, whereas, the respondent / defendant is using mobile phone bearing No. 73919 07489. It is the contention of the petitioner / plaintiff that there was exchange of messages on Whatsapp showing the details of the fees which were agreed upon and accordingly he produced such document along with the certificate under Section 65-B of the Indian Evidence Act.

6. The certificate produced at page 29 of this petition would go to show that the petitioner transferred such messages from his mobile phone to his personal computer and then took out the prints. He specifically mentioned that the said computer is his personal computer having full control over it. All the necessary details are disclosed in the certificate as required under the Indian Evidence Act.

7. The learned trial Court in the impugned order very casually observed that the petitioner / plaintiff is not responsible

official person as stated in Section 65-B(4) of the Act to sign the certificate. The learned trial Court completely lost sight of the fact that the petitioner / plaintiff categorically stated that the mobile phone as well as personal computer with internet facility is his personal computer used for his professional activities. At para 6 of the certificate the petitioner has specifically mentioned that he is the person occupying the responsible official position in relation to the said computer. The ingredients of Sub-section 4 of Section 65-B of the Act are, therefore, complied with. The impugned order thus suffers from non-application of mind and accordingly the same requires to be quashed and set aside. The objection raised by the respondent against the certificate under Section 65-B of the Act are, therefore, over ruled. The learned trial Court to permit the petitioner to place such document on record in evidence. The petition is allowed in the above terms. No costs.

Rule is made absolute in above terms.

(BHARAT P. DESHPANDE, J.)

MP Deshpande