



A.Nos.5919 & 5920 of 2023
in C.S.No.909 of 2004

WEB COPY

Orders reserved on : 23.07.2024

Orders pronounced on : 26.07.2024

P.B.BALAJI, J.,

The 2nd defendant in the suit has come up with these applications seeking to allow the 2nd defendant to file photo copies of the documents listed out as additional documents, namely eight documents in A.No.5919 of 2023 and eleven documents in A.No.5920 of 2023 in the Judges Summons.

2.I have heard Mr.S.R.Sundar, learned counsel for the applicant/2nd defendant in both the applications and Mr.S.R.Raghunathan, learned counsel for the respondents in both the applications.

3.The learned counsel for the applicant/2nd defendant would submit that the applicant has assigned valid reasons in the affidavit filed in support of the applications to receive the said additional documents and he would also take me through the affidavit, where the applicant sets out various diligent steps taken by them to procure the documents and only because they were not traceable even as on date, the application has been filed to permit receipt of photo copies of those documents. He would also place reliance on the decisions of the Hon'ble Supreme Court in *Union of India Vs.*



K.V.Lakshmanan and Others reported in ***(2016) 13 SCC 124*** and also in

Rakesh Mohndra Vs. Anita Beri and Others reported in ***(2016) 16 SCC 438***

with regard to the filing of the additional documents.

4.Per contra, Mr.S.R.Raghunathan, learned counsel for the respondents would first and foremost contend that even with regard to the additional documents which are sought to be filed as photo copies, there is absolutely no whisper about the same in the written statement and there can be no evidence adduced without pleadings and therefore, on this limited ground itself, these applications are liable to be dismissed. He would further submit that the mandate of Section 65 of the Indian Evidence Act has not been complied with and he would also take me through the various principles enunciated under Section 65 of the Indian Evidence Act to fortify his contentions.

5.I have carefully considered the rival submissions advanced by the learned counsel on either side.

6.Insofar as A.No.5919 of 2023 is concerned, admittedly, eight



WEB COPY

documents are sought to be produced by way of photo copies of certain documents. It is the case of the applicant that despite due diligence, these documents could not be produced along with the written statement and these are vital documents to establish the defence set up by the 2nd defendant and permission is sought to produce these documents by way of secondary evidence.

7.Insofar as the A.No.5920 of 2023 is concerned, the documents numbering eleven are sought to be filed. However, even the documents which are sought to be produced by way of additional documents in A.No.5920 of 2023 are also only photo copies. There is absolutely no reason set out for non production of the originals or as to the entitlement of the 2nd defendant to produce secondary evidence, which is of-course subject to satisfaction of Sections 65 and 66 of the Indian Evidence Act. I also do not find any compliance of the requirements of Sections 65 and 66 of the Indian Evidence Act to the additional documents sought to be produced in A.No.5920 of 2023.

8.With regard to A.No.5919 of 2023, the said documents cannot be received since the basic requirement of Section 65 of the Indian Evidence



WEB COPY

Act has not been met by the applicant. Even in the decision of the Hon'ble Supreme Court in ***Rakesh Mohndra's*** case, the Hon'ble Supreme Court has held that unless it is established that the original document is lost or destroyed or deliberately withheld by the party in respect of the documents sought to be used, secondary evidence in respect of the said document cannot be accepted. Therefore, the findings in the said case would squarely apply to the facts of the present case and the applicant cannot produce secondary evidence without establishing the mandate and pre-conditions for leading secondary evidence.

9.However, with regard to the A.No.5920 of 2023, though the prayer is to permit the applicant to file photo copies of the additional documents, it was represented by the learned counsel for the applicant that the originals or certified copies of the said documents would be filed even though in the application only photo copies have been mentioned. Therefore, liberty is granted to the applicant to file the originals/certified copies of the said documents and on production of either the original or certified copies of the said documents sought to be produced as additional documents in A.No.5920 of 2023, the same may be received and marked by the Additional Master, subject to admissibility, proof and relevancy.



WEB COPY

10. With these above observations and directions, the application in A.No.5919 of 2023 is dismissed and the application in A.No.5920 of 2023 is disposed of.

26.07.2024

ata

P.B.BALAJI, J.



WEB COPY



ata

A.Nos.5919 & 5920 of 2023
in C.S.No.909 of 2004

26.07.2024