

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13470 OF 2025

Poonam Jaidev Shroff .. Petitioner
Versus
Jaidev Rajnikant Shroff .. Respondent

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- Mr. Girish Godbole, Senior Advocate a/w Ms. Chandana Salgaocar, Ms. Anuja Jhunhunwala & Ms. Apeksha Sharma i/by NDB Law, Advocates for Petitioner
 - Mr. Vineet Naik, Senior Advocate a/w Ms. Siddhi Doshi & Mr. Roshan Marathe i/by ALMT Legal, Advocates for Respondent
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CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 4, 2025

P. C.:

1. Not on board. Mentioned by way of filing a praecipe dated 04.11.2025.
2. Heard Mr. Godbole, learned Senior Advocate for Petitioner and Mr. Naik, learned Senior Advocate for Respondent.
3. Petition is taken up for hearing forthwith due to exigency expressed by learned Advocate for Petitioner. By consent of both the learned Senior Advocates Petition is heard finally and disposed of by this order.
4. Petition assails twin orders i.e. order dated 20.08.2025 passed below Exh. 690 (appended at page Nos. 36-37 of Petition) and order dated 21.08.2025 passed below Exh. 1 (appended at page No. 39 of

Petition). On 21.08.2025, there is another order passed which is a handwritten order appended at page No. 38 of Petition. Though there is no express challenge thereto in the prayer clauses, the same is also taken exception to by the Petitioner due to the two impugned orders. Both orders are passed by learned Trial Court.

5. Application below Exh. 690 is filed by Petitioner before the Trial Court for exhibiting 6 documents filed by her witness (her daughter) vide Exh. 689 on 14.08.2025. By virtue of this order, document at Sr. Nos. 3 and 5 were admitted by Respondent before me and duly exhibited. However documents at Sr. Nos. 1, 2, 4 and 6 of the said list below Exh. 689 were not exhibited due to reasons stated in paragraph Nos. 3 and 4 of the order dated 20.08.2025. To comply with the directions contained therein, Petitioner filed Application seeking recall / review of the order dated 20.08.2025 by effecting compliance of the deficiency noted in the said order on the following day. That Application for recall / review is appended at page Nos. 44-46 of the Petition and it avers that Certificate under Section 65B of the Indian Evidence Act, 1872 is now filed to overcome the deficiency and therefore order dated 20.08.2025 be recalled and the remaining 4 documents be marked as exhibits. By virtue of the order dated 21.08.2025 at page No. 38, learned Trial Court has observed that said Application does not fall within the ground of review and is therefore

not tenable and despite recording the presence of Petitioner's witness has rejected the same and issued direction to Petitioner to proceed with the Trial. The order dated 21.08.2025 at page No. 39 is passed below Exh. 1 directing continuation of cross-examination. Being aggrieved, the orders are assailed especially in view of the fact that there is direction of the Supreme Court to complete the Trial in a time bound manner as also direction of the Division Bench of this Court to proceed with the Trial on a day to day basis.

6. Mr. Godbole, learned Senior Advocate appearing for Petitioner would submit that rejection of Application for exhibiting the documents despite the Petitioner complying with the deficiency on the following day and keeping her witness (her daughter) present before the Trial Court on the following day ought to have been considered by the learned Trial Court. He in his usual fairness admits that originally when the list below Exh. 689 was filed, Certificate under Section 65B of the Indian Evidence Act was not filed. He would draw my attention to the directions contained in paragraph No. 3 of the impugned order dated 20.08.2025 and state that the learned Trial Court has held that such Certificate can be filed at any stage. He would submit that on the following day i.e. on 21.08.2025 Certificate under Section 65B (appended at page Nos. 229-231 of Petition) was filed. He would draw my attention to paragraph No. 3 of the Application appended at page

Nos. 44-46 of Petition to submit that when the captioned matter was listed on 20.08.2025 before the Trial Court, the witness (daughter of Petitioner) had a genuine difficulty as she had to appear for her SAT examination and prepare for the same scheduled on 22.08.2025 at 8.00 a.m. He would submit that on the said date i.e. on 20.08.2025, the witness had to appear for a practice test scheduled between 1.00 p.m. to 3.00 p.m. due to which her phone was switched off and she could not remain present before the Trial Court. He would candidly admit the fact that due to inadvertence and oversight Certificate under Section 65B was not filed along with the affidavit of evidence / list of documents. He would therefore persuade the Court to pass appropriate directions to the Trial Court to take the Certificate under Section 65B on record and direct the Trial Court to mark the remaining 4 documents since the deficiency now stood complied with albeit with some delay. He would submit that such delay, if any, would not be fatal to the case of Petitioner in view of the decision of the Supreme Court in the case of ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Ors.***¹ wherein in paragraph Nos. 33 and 34, the Supreme Court has observed as follows:-

"33. The non obstante clause in sub-section (1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65-B, which is a special provision in this behalf — Sections 62 to 65 being irrelevant for this purpose. However, Section 65-B(1) clearly differentiates between the

¹ (2020) 7 SCC 1

“original” document — which would be the original “electronic record” contained in the “computer” in which the original information is first stored — and the computer output containing such information, which then may be treated as evidence of the contents of the “original” document. All this necessarily shows that Section 65-B differentiates between the original information contained in the “computer” itself and copies made therefrom — the former being primary evidence, and the latter being secondary evidence.

34. *Quite obviously, the requisite certificate in sub-section (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a 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”, as defined, happens to be a part of a “computer system” or “computer network” (as defined in the Information Technology Act, 2000) and it becomes impossible to physically bring such network or system to the court, then the only means of proving 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). This being the case, it is necessary to clarify what is contained in the last sentence in para 24 of Anvar P.V. [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 ...”. This may more appropriately be read without the words “under Section 62 of the Evidence Act,...”. With this minor clarification, the law stated in para 24 of Anvar P.V. [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.”*

6.1. He would also draw my attention to paragraph No. 52 of the above decision and contend that Section 65B does not speak of the stage at which such certificate must be furnished to the Court and there is no limitation prescribed for the same. He would submit that in the present case, Certificate under Section 65B has been furnished within a reasonable time of having noticed the inadvertence and therefore the same be permitted to be taken on record and the remaining 4 documents in the list be directed to be marked as exhibits.

7. *Per contra*, Mr. Naik, learned Senior Advocate appearing for Respondent would at the outset draw my attention to the impugned order dated 20.08.2025 and more specifically paragraph Nos. 3 and 4 thereof. He would submit that all that the learned Trial Court has observed that the 4 documents which are not exhibited could not be exhibited as appropriate procedure envisaged under the Indian Evidence Act was not followed. He would rely upon the direction and observation made by learned Trial Court stating that such certificate can be filed at any stage. He would submit that once that liberty is given to Petitioner and on the following day the Petitioner has filed the said Certificate, all that the Petitioner had to do was to file an appropriate Application before the learned Trial Court for taking the Certificate on record in consonance with the directions contained in paragraph No. 3 of the order dated 20.08.2025 and seek exhibiting of the 4 documents. He would submit that instead Petitioner filed Application seeking recall of the order dated 20.08.2025 and such Application seeking recall or review is *prima facie* not permissible in law. He would submit that in that view of the matter, the order passed by learned Trial Court on 21.08.2025 appended at page No. 39 has been correctly passed since no fault can be found with the order dated 20.08.2025 which reserves right of Petitioner to file Certificate under Section 65B before the Trial Court which the Petitioner has not done

till today. Rather the Petitioner has found fault with the twin orders dated 20.08.2025 and 21.08.2025 which have been correctly passed according to him. He would therefore persuade the Court to dismiss the Petition by passing appropriate directions in accordance with law.

8. I have heard both the learned Senior Advocates at the Bar and with their able assistance, perused the record of the case. Submissions advanced by them have received due consideration of the Court.

9. It is *prima facie* seen that the Trial Court does not dispute the fact that Petitioner is entitled to file the Certificate under Section 65B at any stage. That is the bone of contention. It is argued on behalf of Respondent that the impugned orders were passed in August 2025 and Petition is filed on 26.09.2025 i.e. almost one month thereafter. I am not inclined to hold the delay against Petitioner in filing the Petition in view of various proceedings going on between the parties wherein in the interregnum, I have passed two orders. Be that as it may, present Petition is within a very narrow compass. Petitioner has cured the deficiency by filing the Certificate under Section 65B immediately on the next date i.e. on 21.08.2025 and in the Application appended at page Nos. 44-46 of Petition admitted to the fact that due to inadvertence and oversight the said Certificate was not filed along with the affidavit of evidence of her witness (her daughter). Once the

said Certificate is filed, there can be no impediment in accepting the said Certificate which is filed under the Indian Evidence Act.

10. Though it is true that the nomenclature of the Application seeking recall and review of the order dated 20.08.2025 may not be correct on the face of record, the end result therein cannot be held against the Petitioner. If that be the case then the Petitioner will be deprived of a very valuable right of leading evidence in respect of the 4 documents which cannot be allowed to happen by the Court especially when the Petitioner has shown her bonafides. Reliance placed by Mr. Godbole on paragraph Nos. 33 and 34 read with paragraph No. 52 of the decision in the case of *Arjun Panditrao Khotkar (supra)* *prima facie* covers the issue argued in the present case. Once the requisite certificate is produced or the witness has made himself / herself available, the same will have to be accepted by the Trial Court. Learned Trial Court in its order dated 20.08.2025 holds that the said Certificate can be filed by Petitioner at any stage. In that view of the matter since the said Certificate has now been filed, learned Trial Court is directed to consider the same, take it on record of the Trial and thereafter forthwith exhibit the documents at Sr. Nos. 1, 2, 4 and 6 of the list of documents below Exh. 689 as exhibits in accordance with law after hearing the parties and thereafter proceed with further trial.

11. A server copy of this order shall be made available and placed before the Trial Court for consideration at the request made by Mr. Godbole. Learned Trial Court is directed by this Court to take cognizance of this order and proceed further with the trial as directed in accordance with law since hearing of the case before the Trial Court is scheduled on a day to day basis as noted in the impugned orders.

12. Only to the above extent as directed, the impugned order dated 20.08.2025 stands modified. Rest of the said order is retained as it is. Further order dated 21.08.2025 appended at page No. 38 directing the witness of Petitioner to appear before the Court for cross-examination stands set aside and the said witness shall now appear for cross-examination immediately once the aforesaid 4 documents are marked as exhibits in evidence in accordance with law. Needless to state that marking of the said documents and thereafter cross-examination of witness of Petitioner can be done forthwith by the learned Trial Court.

13. Order passed below Exh. 1 dated 21.08.2025 is set aside in view of the aforesaid directions which are given by this Court subject to order of appointment of Court Commissioner for completing the trial.

14. Petition is allowed and disposed in the above terms.