



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

WRIT PETITION NO.5739/2024

Kamlesh s/o Chanddrakant Suryavanshi

Vs.

Swati w/o Kamlesh Suryavanshi alias Swati Nilkanthrao Pohare (Maiden Name)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Ritesh Badhe, Advocate for petitioner (through V.C.)
Ms Jaimala K. Lavate, Advocate for respondent

CORAM : SMT. M.S. JAWALKAR, J.

DATED : 30/01/2025

Heard learned Counsel for both the parties.

2. The petition assails the order dated 30.07.2024 passed by the learned Civil Judge Senior Division, Akola below Exhibit-66 in H.M.P. No.01/2022. By this order, learned Civil Judge Senior Division, Akola rejected the application of the petitioner for leading evidence.

3. It is the contention of the petitioner that he has filed the photographs along with list Exh.59 and 65, which he found in the parking slot of P.W.D. Office at Solapur kept on his motorcycle. As per the petitioner, the original photographs are in possession of the applicant.

4. It is contention of respondent that the original petition filed by the petitioner for divorce came to be withdrawn and the counter claim filed by the wife is pending.

5. From the contention of the petitioner itself, it appears that the photographs were kept on his motorcycle in the parking of P.W.D. Office. However, he did not clarify and make a statement that from whose custody those photographs received by him. As such, the learned Trial Court rightly rejected the application to lead secondary evidence as there is no foundation laid by the petitioner to grant such permission.

6. Learned Counsel for petitioner relied on ***Aman Lohia Vs. Kiran Lohia (2021) 5 SCC 489***, however what is observed in paragraph No.37 which is reproduced below:

“37. If that does not happen, during the resolution of disputes between the parties, the Family Court then has to bear in mind the principles enunciated in the Evidence Act, 1872, which had been made applicable in terms of Section 14 of the 1984 Act. A Family Court can receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Evidence Act, 1872.”

7. It appears that it is in respect of proceedings in Family Court. Strict rules of evidence are not applicable in the matter before the Family Court.

8. The learned Counsel for petitioner also relied on ***Vijay Vs. Union of India and others 2023 SCC***

OnLine SC 1585, there is no dispute over the proposition of law laid down in the said judgment. It is held by the Hon'ble Apex Court in paragraph No.33 reads as under:

“33. Section 63 of the Evidence Act gives an exhaustive definition declaring that secondary evidence "means and includes" the five kinds of evidence mentioned therein. Section 65 of the Evidence Act allows secondary evidence to be given of the existence, condition, or contents of documents under the circumstances therein mentioned. It provides for the circumstances in which secondary evidence can be used when the original document is unavailable or inaccessible. It is imperative to adhere to the principles outlined in these sections, including the proper documentation and authentication, to successfully produce secondary evidence in legal proceedings.”

9. It is made very clear that in what circumstances, the secondary evidence can be allowed. Section 65 of the Evidence Act allows secondary evidence to be given of the existence, condition, or contents of documents under the circumstances therein mentioned. It provides for the circumstances in which secondary evidence can be used when the original document is unavailable or inaccessible. In view of paragraph No.34 in point No.33.7 reads as under foundational evidence is must:

“34. ...

33.7. When the copies are produced in the absence of the original document, they become good secondary evidence. Still, there must be foundational evidence that the alleged copy is a true copy of the original.”

10. The party seeking to lead secondary evidence is required to substantiate that there is foundational evidence that the alleged copy is a true copy of the original. As per petitioner’s contention itself is that those photographs were found on the seat of his vehicle. As such, it is not in the possession of other party. In view of this settled position, I am satisfied that the petition is devoid of any merit. Accordingly, the petition is dismissed.

11. The order dated 30.07.2024 passed below Exhibit 66 in HMP No.1/2022 by learned Civil Judge Senior Division, Akola is hereby confirmed.

12. The Writ Petition is disposed of accordingly. No order as to the costs.

JUDGE

R.S. Sahare