



CRP.No.3248 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2025

CORAM:

THE HON'BLE MR. JUSTICE M.JOTHIRAMAN

CRP.No.3248 of 2023
CMP.No.20026 of 2023

M.Kamaraj

... Petitioner

vs.

Dr.M.Sudheer

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Judgment and Decree dated 18.07.2023 passed by the learned XVII Additional City Civil Judge, Chennai in I.A.No.7 of 2023 in O.S.No.2267 of 2020.

For Petitioner : Mr.S.Haja Mohideen Gisthi

For Respondent : Mr.A.K.Sriram, Senior Advocate
for
M/s.A.S.Kailasam & Associates

ORDER

The unsuccessful plaintiff has preferred this Civil Revision Petition.
Originally the plaintiff / M.Kamaraj has filed a Civil Suit in O.S.No.2267 of 2020



CRP.No.3248 of 2023

WEB COPY

before this Court for recovery of money. The defendant / respondent herein filed leave to defend application in A.No.1172 of 2018. The learned Master passed a conditional order dated 22.03.2018 directing to furnish security for Rs.30,00,000/-. The aforesaid order was not complied by the defendant and the learned Master dismissed the said application on 26.04.2018 and decreed the Suit.

2. The defendant has preferred a Civil Revision Petition in C.R.P.No.505 of 2023 before this Court against the order passed by the Court below in I.A.No.6 of 2023 in O.S.No.2267 of 2020 and the same was allowed and the Court below was directed to receive a Pen Drive along with Section 65B Certificate, vide order dated 09.03.2023. At this juncture, the plaintiff has filed a petition in I.A.No.7 of 2023 in O.S.No.2267 of 2020 under Order XIII Rule 3 CPC not to permit the defendant to mark the pen drive along with certificate under Section 65B of the Evidence Act, without production of original as the same is inadmissible. Upon considering the arguments advanced on either side, the Court below dismissed the said application, vide order dated 18.07.2023 on the ground that the documentary evidence in the form of electronic evidence available with the defendant should



CRP.No.3248 of 2023

WEB COPY

not be blocked as the trial Court is a court of evidence. Aggrieved over the same, the plaintiff has preferred the present civil revision petition.

3. The learned counsel appearing for the petitioner made the following contentions:

(i) The Court below failed to consider that initially the Suit was filed under Order VI Rule 1 CPC, Order VII Rule 1 CPC r/w. Order XXXVII Rules 1 & 2 of CPC as summary suit. The respondent / defendant filed leave to defend application in A.S.No.1172 of 2018 and counter affidavit contending that by his own admission, the defendant in his reply notice and as well as in the affidavit in support of the application for leave to defend, has made contradictory statements and he has admitted his transactions.

(ii) The Court below failed to note that the defendant instead of coming into the witness box filed an application in I.A.No.3 of 2022 to refer the pen drive containing voice recording as available in the pendrive enclosed with the petition for voice analysis along with the voice samples of the petitioner, to which no document was produced before the Court below.

(iii) The respondent/defendant had never whispered anything about the purported pen drive containing the call recordings at any



CRP.No.3248 of 2023

WEB COPY

instance prior to filing I.A.No.6 of 2023 and therefore, the principle of estoppel applies.

(iv) The Court below ought to have considered that I.A.No.3 of 2022 was filed regarding the voice recordings alleged to have recorded by the respondent himself through voice recorder in his phone. Further, I.A.No.6 of 2023 was filed to mark the pen drive containing the call recordings and the defendant is misleading and confusing the Court and attempting to mark the purported pen drive created by him after filing of the Suit.

(v) The Court below failed to note that the document proposed to be produced was neither filed along with the written statement, which itself was filed after enormous delay. The very document i.e., proposed to be filed at this later stage is in fact secondary evidence which, by no stretch of imagination can be presumed to be proper. The defendant has not explained anywhere in his pleadings as to the original source or about the existence of the primary evidence, which ought to have been filed along with the written statement.

(vi) The Court below failed to consider that as per Section 65B(4) of the Evidence Act, secondary evidence will be taken on record along with Section 65B Certificate, when the primary evidence is available. As per Clause (a) of Section 65 of Evidence Act, secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in



CRP.No.3248 of 2023

WEB COPY

possession or power of a person against whom the document is sought to be proved or of any person out of reach of, or not.

(vii) The Court below failed to consider that under Section 65B of the Indian Evidence Act unless there is primary evidence, the purported pen drive cannot be testified as evidence.

(viii) The reasons assigned by the Court below are not legally tenable and not sustainable and not sound and proper.

4. To strengthen his contention, the learned counsel for the revision petitioner has placed reliance on the decision in ***P.Kishore v. The Secretary to Government of India, Secretariat, New Delhi and two others [W.P.No.143 of 2018 dated 02.07.2025]*** to show that telephone tapping would infringe Article 21 of the Constitution of India, unless such infringement has the sanction of a procedure established by law. Right to privacy would certainly include telephone conversation in the privacy of one's home or office. Telephone tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law. The learned counsel has also relied upon another judgment of the Hon'ble High Court of Himachal Pradesh, Shimla in ***Dharmesh Sharma v. Tanisha Sharma [CMPMO.No.665 of 2022 dated 17.10.2024]***, to



CRP.No.3248 of 2023

WEB COPY

show that right to privacy has been held to be an integral part of Article 21 of the Constitution of India. Recorded conversation of the respondent-wife, in the case on hand, with her mother, which is sought to be placed on record, therefore is held to be illegal, as it amounts to infringement of her right to privacy. Since the aforesaid recording is illegal, therefore, it is not admissible in evidence.

5. *Per contra*, learned Senior Counsel appearing for the respondent / defendant would submit that the defendant has filed CRP.No.505 of 2023, against the dismissal of I.A.No.6 of 2023, to receive the additional document of the respondent herein, which is the pen drive and this Court vide order dated 09.03.2023 held that Section 65B Certificate was maintainable and allowed. Once this Court held it as admissible, any other averments of the plaintiff are not relevant. Aggrieved over the same, the revision petitioner / plaintiff has approached the Hon'ble Apex Court in SLP.No.8006/2003, which was not entertained and disposed of by order dated 04.05.2003 and thus the stand of the plaintiff was negated by this Court and also in the Hon'ble Supreme Court. The Court below has also held that conversations are transferred from his cellphone to



CRP.No.3248 of 2023

WEB COPY

his laptop and that the same conversation are being produced in a pen drive, which is maintainable. The defendant complied with the provisions of Section 65-B and the documents sought to be produced for cross examination.

6. This Court has considered the submissions made and also perused the materials available on record.

7. It is not in dispute that originally the Civil Suit was filed in C.S.No.1940 of 2016 and thereafter, the matter was transferred to the Court below and the same was renumbered as O.S.No.2267 of 2020. The defendant has filed his written statement and necessary issues were framed on 23.12.2021. It is also not in dispute that the defendant has filed an application in I.A.No.03/2022 under Section 45 of the Indian Evidence Act seeking to send the pen drive allegedly containing the conversation between the plaintiff and the defendant for comparison of the admitted voice of the plaintiff. The Court below dismissed the petition on 14.09.2022. Aggrieved over the same, the defendant preferred CRP.No.3307 of 2022 before this Court and this Court, vide order dated



CRP.No.3248 of 2023

WEB COPY

20.10.2022 dismissed the revision petition. Again the defendant filed an application in I.A.No.6 of 2023 in O.S.No.2267/2020 under Order VII Rule 1-A(3) of CPC praying to grant leave to receive the document filed along with Section 65B Certificate and the Court below dismissed the application on 02.02.2023. Aggrieved over the same, the defendant filed a revision petition in CRP.No.505 of 2023, which was allowed by order dated 09.03.2023 by permitting the defendant to file the Pen Drive as document along with electronic certificate under Section 65B of the Indian Evidence Act. Challenging the same, the plaintiff filed SLP.No.8006/2023 before the Hon'ble Supreme Court, which came to be disposed of vide order dated 04.05.2023 and it is useful to extract the relevant portions of the said order:

"Heard Mr.R.Balasubramanian, the learned Senior Counsel appearing for the petitioner. The counsel would point out that the High Court erred in allowing the receipt of the pen drive along with the certificate under Section 65B of the Indian Evidence Act, 1872, (for short, the "Evidence Act") for consideration by the trial court, in the recovery suit. Earlier on 20.10.2022, the High Court upheld disallowance of similar electronic evidence by the trial Court.

However, it is noticed that in the second round, the respondent has also produced the certificate under Section 65B of



CRP.No.3248 of 2023

WEB COPY

the Evidence Act. Mr.R.Balasubramanian has raised contention on whether the said certificate is in accord with the provisions of sub-section (2) of Section 65B of the Evidence Act, we are of the view that all objections to the certificate presented under Section 65B(4) of the Evidence Act can be raised by the petitioner before the trial Court.

Taking the above view, the Special Leave Petition is not entertained since the suit is pending. However, liberty is granted to the petitioner to raise all legal contention vis-a-vis the admissibility of the pen drive and Section 65B Certificate.

With the above, the Special Leave Petition stands disposed of."

8. It is seen from the records that the defendant has produced a Pen Drive along with the Certificate under Section 65B of the Indian Evidence Act, as documentary evidence on his side. It is also seen from the records that after filing proof affidavit on behalf of the defendant, the case has been posted for marking of documents. Again the plaintiff filed an application in I.A.No.7 of 2023 in O.S.No.2267 of 2020 under Order XIII Rule 3 CPC to not to permit the defendant to mark the pen drive along with Certificate under Section 65B of the Evidence Act, without production of original as the same is inadmissible.



CRP.No.3248 of 2023

WEB COPY

9. At this juncture, it is relevant to cite the judgment of the Hon'ble Supreme Court in *State of Karnataka v. T.Naseer @ Nasir @ Thandiantavida Naseer @ Umarhazi @ Hazi & Ors. [2023 INSC 988]* in para 8 observed that the Hon'ble Apex Court in the decision in *Anwar P.V. v. P.K.Basheer [(2014) 10 SCC 423]* has opined that a certificate under Section 65B of the Act is not required if electronic record is used as a primary evidence. In para 9 it was held that the aforesaid issue was subsequently considered by the Hon'ble Apex Court in *Arjun Panditrao Khotkar v.Kailash Kushanrao Gorantyal [(2020) 7 SCC 1]* has opined that the certificate under Section 65B of the Act is unnecessary when the original document i.e., primary evidence itself is produced. In the very same decision, in para 10, the Hon'ble Supreme Court held that in *State of Karnataka v. M.R.Hiremath [2019 (7) SCC 515]*, the Hon'ble Apex Court after referring to the earlier judgment in *Anwar's case (supra)* held that the non-production of the Certificate under Section 65B of the Act is a curable defect.

10. It is also relevant to cite the judgment of the Hon'ble Supreme Court in *RVE Venkatachala Gounder v. Arulmigu Viswesaraswami and VP Temple*



CRP.No.3248 of 2023

WEB COPY

[2003 AIR (SC) 4548] wherein it was held that difference between objection on admissibility of a document and objection on mode of proof. The objections as to admissibility of documents in evidence may be classified into two classes:-

(i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and

(ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. It is also relevant to cite the judgment of the Hon'ble Supreme Court in *Catholic Mission v. State of Madras and another* [AIR 1966 SC 1457], wherein it was held that a document not admissible in evidence, though brought on record has to be excluded from consideration.

11. The Hon'ble Supreme Court in the decision in *Bipin Shantilal Panchal v. State of Gujarat* reported in 2001 LawSuit (SC) 332, has held as under:

“When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at



CRP.No.3248 of 2023

WEB COPY

the last stage in the final judgment. If the Court find at the final stage tha the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view, there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty or a document, the Court has to decide the objection before proceeding further. For all other objections, the procedure suggested above can be followed.)”

12. Keeping in mind the proposition laid down by the Hon'ble Apex Court in the above rulings, in the case on hand, it is for the revision petitioner to raise all legal contentions as to the admissibility of the pen drive and Section 65B Certificate at the time of marking as evidence, as observed by the Hon'ble Supreme Court, vide order dated 04.05.2025. In the light of the reasons assigned above, this Court finds no reason to interfere with the order impugned and finds no merit in this Civil Revision Petition and it is liable to be dismissed.

13. This Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

16.09.2025

Intex : Yes/No
Internet : Yes/No
Jvm



CRP.No.3248 of 2023

WEB COPY

To
XVII Additional City Civil Court,
Chennai

M.JOTHIRAMAN, J.



WEB COPY



CRP.No.3248 of 2023

Jvm

CRP.No.3248 of 2023

16.09.2025