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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 20th January, 2025*+ **CRL.M.C. 3692/2017, CRL.M.A. 15019/2017****MRS KANCHAN AGGARWAL**

W/o Mr. Ajay Aggarwal

R/o D-147, Sector-26,

Noida-201301 (Uttar Pradesh)

.....Petitioner

Through: Mr. Varun K. Chopra, Advocate.

versus

1. **EMIRATES BANK INTERNATIONAL PJSC**

A Public Joint Stock Company

Incorporated under the Laws of United Arab Emirates,

having its registered Office at DUBAI

UNITED ARAB EMIRATES,

POST BOX N.2923.

And having its India office at:

104, Makers Chambers-VI, 10th Floor,

220, Nariman Point,

Mumbai 400 021.

2. **MR. AJAY AGGARWAL**

S/o Late Mr. Kedar Nath Aggarwal,

R/o D-147, Sector 26,

Noida-201301 (Uttar Pradesh)

3. **MR. VIJAY AGGARWAL**

S/o Late Mr. Kedar Nath Aggarwal,

R/o 502, Nav Jyoti Apartments,

Gandhi Nagar, Civil Lines,

Agra, Uttar Pradesh-282003.

.....Respondents

Through: Mr. Rajbir Singh Kundu and Mr.

Signature Not Verified

Digitally Signed
By: VIKAS AKORA
Signing Date: 22.02.2025
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Prakhar Kumar Londhi, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. A Criminal Misc. Case under Section 482 of the *Code of Criminal Procedure, 1973* (hereinafter referred to as "Cr.P.C") read with Article 227 of the Constitution of India has been filed for setting aside of Order dated 10.08.2017 vide which the learned ACMM has permitted the Respondent/Complainant to adduce secondary evidence subject to cost of Rs.25,000/- to be deposited in the Court.
2. *Learned counsel for the Respondent* submits that the secondary evidence was sought to be led in respect of certain documents, the originals of which were not traceable. However, the Complainant has now been able to trace the original documents and the same would be proved in accordance with law. He has no objection if the requisite Orders are made accordingly.
3. **Submissions heard.**
4. **Briefly stated**, CC No.73/3 of 2014 was filed by the Complainant, wherein pre-summoning evidence had been recorded. On 17.07.2017, one Application under Section 63 of the *Indian Evidence Act, 1872* for producing the secondary evidence at the stage of pre-charge evidence was filed after 14 opportunities were taken by the Complainant to produce the original documents from Dubai i.e. from 2013 to 2017. However, the Application was allowed summarily without hearing the Counsel for the Accused/Petitioner or for that matter any other accused.
5. The first aspect which needs to be highlighted is that no Application under Section 65 of the *Indian Evidence Act, 1872* is required to be filed for



leading of secondary evidence.

6. In the case of Dhanpat vs. Sheo Ram (2020) 16 SCC 209, the Apex Court while considering this aspect had observed that there is no requirement for moving an Application in terms of Section 65(c) of the Indian Evidence Act before the secondary evidence is led. The party to the *lis* may choose to file an Application before the learned Trial Court, but if any party to the suit has laid the foundation of leading secondary evidence, either in the plaint or in the evidence, the secondary evidence cannot be ousted from consideration for permission to lead secondary evidence was not filed.

7. Similar observations have been made in the case of Prem Chandra Jain vs. Sri Ram, MANU/DE/2860/2009, wherein it was held that there is no need for filing an Application under Section 65 of the *Evidence Act, 1872* for seeking permission to lead secondary evidence. The documents can be proved either by primary or by secondary evidence. Of course for proof of documents by secondary evidence the conditions laid down in Section 65 have to be satisfied. However, the said conditions can be satisfied only during the evidence and not by way of making an Application.

8. Thus, it is a settled proposition of law that if the documents are relied upon by the Plaintiffs and they choose not to produce the same in accordance with law, the consequences of non-production are to be suffered by the Plaintiffs. Similar rule applies for the documents pertaining to the Defendants. In so far as the documents are not being produced or available in original, the law clearly provides for adducing of the secondary evidence under Section 65 of the *Indian Evidence Act, 1872*, if the circumstances are



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established by the concerned party. No formal permission of the Court is required under Section 65 of the Indian Evidence Act, 1872 for leading secondary evidence.

9. *In the present case*, the Petitioner/Accused has himself stated that the Complainant/Respondent had sought 14 dates to be able to produce the original documents from Dubai, but thereafter he had filed the present Application to lead secondary evidence. As narrated above, filing of Application for adducing secondary evidence is not even mandatory and the justification and the grounds for leading secondary evidence have to be set out from the evidence itself. The Respondent/Complainant therefore, had a right to lead the secondary evidence in any case for which the justification had to be laid during the evidence.

10. *Therefore, the contention of the Petitioner that they were not heard, is without any merit.*

11. Furthermore, the counsel for the Respondent has submitted that the original documents have become available and the evidence would be led on the original documents. In the light of the submissions made, the impugned Order permitting secondary evidence to be led by the Complainant has lost its significance.

12. There is no infirmity in the impugned Order which does not merit any interference.

13. The Petition is dismissed and stands disposed of along with the pending Application(s).

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 20, 2025/va