

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

**HON'BLE SHRI JUSTICE ANIL VERMA
ON THE 25th OF JULY, 2024**

MISC. PETITION No. 7785 of 2023

*(SANTOSH CHOUHAN S/O LATE HARIRAM CHOUHAN
Vs
YASHWANT S/O DAYALDAS KURRE AND OTHERS)*

Appearance:

***(SHRI NILESH AGRAWAL – ADVOCATE FOR THE PETITIONER)
(SHRI AJAY BAGADIA, LEARNED SENIOR COUNSEL WITH SHRI
GAJENDRA SINGH – ADVOCATE FOR RESPONDENTS NO.1 TO 7)
(SHRI SHALABH SHARMA – GA FOR RESPONDENT NO.8/STATE)***

ORDER

1. Petitioner has preferred this miscellaneous petition under Article 227 of the Constitution of India being aggrieved by the impugned order dated 24.11.2023 passed by the 7th District Judge, Indore in Civil Suit No.1345/2018, whereby an application under Section 65 of the Evidence Act has been dismissed.

2. Brief facts of the case are that the petitioner has filed a civil suit against the respondents/defendants for specific performance of contract, declaration of title and permanent injunction. After completion of the pleadings, trial court has framed the issues and directed both the parties to adduce their evidence. Petitioner/plaintiff at the stage of his evidence, has preferred an application under Section 65 of the Evidence Act to

allow plaintiff to bring photocopies of the documents as secondary evidence. After hearing both the parties, trial Court has dismissed the application filed by the petitioner vide order dated 24.11.2023. Being aggrieved by the impugned order, petitioner has preferred this miscellaneous petition.

3. Learned counsel for the petitioner contended that the impugned order passed by the trial Court is contrary to law and facts. Trial court has not considered the fact that the documents requisitioned to be taken on record as secondary evidence are admitted documents and they are necessary for proper adjudication of this civil suit and the requisite documents are the base of transactions taken place between both the parties. Trial court has ignored the fact that the respondents/defendants in their reply have nowhere challenged that the requisite copy of the documents are manipulated. Requisite documents are the photocopy of its originals. Trial court has dismissed his application without passing any speaking order. Hence, the impugned order be set aside and his application under Section 65 of the Indian Evidence Act be allowed. In support of his submission he has placed reliance upon the judgment of Hon'ble Apex Court in the case of **Nawab Singh Vs. Inderjit Kaur reported in (1999) 4 SCC 413.**

4. Per contra, learned senior counsel for respondents No.1 to 7 opposes the prayer and prays for its rejection by submitting that the impugned order is just and proper and not deserve for any interference.

5. Respondent No.8/State is the formal party.

6. Both the parties heard at length and perused the entire record with due care.

7. It is well settled principle of law that when a photocopy of the document is produced, then in order to get the benefit of Section 65 of the Indian Evidence Act, the party concerned is required to lay a factual foundation for giving the secondary evidence. The party concerned may be required to explain the circumstances, under which the photocopy was prepared and who was in possession of the original at the time of preparing the same. The secondary evidence must be authenticated by the foundational evidence that copy sought to be produced is in fact true copy of the original. Permitting a party to lead secondary evidence is exception and not the rule. In this regard, the judgment passed by the Hon'ble apex Court in the case of **H. Siddiqui (Dead) by Lrs vs. A. Ramalingam (2011) 4 SCC 240** is relevant, wherein while considering the issue of admissibility of photocopy of the power of attorney in evidence and in the light of scope of Section 65 of the Evidence Act has held as under:

“12- The Provisions of Section 65 of the Act 1872 provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. In a case where original documents are not produced at any time, nor has any factual foundation has been led for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non production of the original is accounted for, so as to bring it within one or other

of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document of in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The court has an obligation to decide the admissibility of a document in secondary evidence before making endorsement thereon.”

8. In the case of **Ashok Dulichand vs Madahavlal Dube & Another on 5 August, 1975, 1975 AIR 1748, 1976 SCR (1) 246**, the Hon'ble apex court has held as under:-

“7.....In order to bring his case within the purview of clause (a) of section 65, the appellant filed applications on July 4, 1973, before respondent No. 1 was examined as a witness, praying that the said respondent be ordered to produce the original manuscript of which, according to the appellant, he had filed photostat copy. Prayer was also made by the appellant that in case respondent No. 1 denied that the said manuscript had been written by him, the Photostat copy might be got examined from a handwriting expert. The appellant also filed affidavit in support of his applications. It was, however, nowhere stated in the affidavit that the original document of which the photostat copy had been filed by the appellant was in the possession of respondent No. 1. There was also no other material on the record to indicate that the original document was in the possession of respondent No. 1. The appellant further failed to explain as to what were the circumstances under which the photostat copy was prepared and who was in possession of the original document at the time its photograph was taken. Respondent No. 1 in his affidavit denied being in possession of or having anything to do with such a document.”

9. From perusal of the impugned order it appears that the learned court below has rightly held that photocopy of certain documents are neither certified copy of the original, nor got prepared from the original by mechanical process and compared with the original, which ensures the accuracy of the said document. The application filed by the petitioner also reveals that no factual foundation laid by the petitioner in respect of preparation of photocopy from the original. Therefore, the petitioner did not fulfill the requirement of Section 65 of Indian Evidence Act.

10. In the context of aforesaid judgments of the Hon'ble apex Court passed in the case of **H. Siddiqui (Dead) by Lrs and Ashok Dulichand (supra)**, this Court is of the considered view that the tribunal below has not committed any error in rejecting the application filed by the petitioner under Section 65 of the Indian Evidence Act and the impugned order is based on cogent reasons. Therefore, no reason for interference in the impugned order is called for.

11. Accordingly, being devoid of any merits, present petition deserves to be and is hereby dismissed.

C.C. as per rules.

(ANIL VERMA)
JUDGE