

IN THE HIGH COURT OF JHARKHAND AT RANCHI

C.M.P. No. 11 of 2023

Smt. Meena Kumari Sinha Plaintiff/Petitioner

Versus

1. M/s Maruti Suzuki India Ltd, New Delhi

2. B.S. Bhargava

3. M/s Narendra Motor, Ranchi

4. B.K. Jaggi Defendants/Opp. Parties

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner: Mr. Amar Kumar Sinha, Advocate

Mr. Sumit Kumar, Advocate

For the Opp. Parties: Mr. Praveen Jaiswal, Advocate

08/Dated: 10th May, 2024

Prayer

1) The plaintiff/petitioner has filed this petition under Article 227 of the Constitution of India challenging the order dated 22.12.2022 passed by learned Addl. Civil Judge (Jr. Div.)-XXII, Ranchi in O.S. No.2285 of 2019, whereby and whereunder the petition filed under Section 65 of the Indian Evidence Act for accepting the photocopies of the bank drafts and money receipts by way of secondary evidence in the suit has been rejected on the ground that the plaintiff has failed to prove their genuineness as the plaintiff could not produce any certification from the Bank from where items were issued.

Submission on behalf of the learned counsel for the petitioner

2) Mr. Amar Kumar Sinha, learned counsel appearing for the plaintiff/petitioner, has submitted that the reason of rejection of the petition dated 20.12.2022 which has been filed under Section 65 of the Indian Evidence Act is absolutely improper reason being that the said petition has been rejected on the ground of no certification from the bank made available in the documents (bank drafts and the money receipts).

3) It has been contended that the petition dated 20.12.2022 was not filed under Section 65-B of the Indian Evidence Act and since cannot be filed under the aforesaid provision in view the fact that the electronic goods is not a subject-matter, rather the document has been sought to be made acceptable by treating it as secondary evidence on account of availability of the conditions stipulated under Section 65 of the Indian Evidence Act, but instead of giving consideration of the legal issue as per the provision of Section 65 of the Indian Evidence Act, the order has been passed presuming the petition filed under Section 65-B of the Indian Evidence Act, hence, the impugned order suffers from error and as such, is not sustainable in the eyes of law.

Submission on behalf of the learned counsel for the Opposite Parties

4) While, on the other hand, Mr. Praveen Jaiswal, learned counsel appearing for the respondents, has submitted that the petition dated 20.12.2022 can well be responded wherein it has been stated that the said documents, which are being sought to be accepted as secondary evidence, are only the photocopies as also in some places written in hand-written scripts, hence, serious objection was made to the said petition. It has been contended that by considering the said objection, the impugned order has been passed and hence, the impugned order suffers from no error.

Analysis

5) This Court has heard the learned counsel for the parties and gone across the pleading made in the petition dated 20.12.2022 as also the findings recorded by the learned trial Court in the impugned order. This Court has taken into consideration the petition filed basis upon

which the impugned order dated 22.12.2022 has been passed, wherein the prayer has been made to grant leave to the plaintiff to tender photocopies of four demand drafts bearing Nos. 070999, 256526, 256564 and 256565 issued by the State Bank of India, Pandra Branch, Ranchi drawn in favour of Maruti Udyog Ltd payable at Service Branch, New Delhi and two money receipts. The reason has been assigned therein that the original money receipt Nos.028 and 029, which have been lost by the conducting counsel but the photocopies of the same have been retained which are being sought to be relied upon by the plaintiff.

6) The response to the said petition has also been filed wherein it has been stated that the documents are photocopies of partly printed and partly hand-written documents, hence, cannot be allowed to be tender as secondary evidence on behalf of the plaintiff.

7) The learned Trial Court on consideration of the rival submissions/grounds has rejected the petition dated 20.12.2022 by passing the impugned order.

8) This Court in order to appreciate the argument advanced on behalf of the parties needs to refer herein the provisions of Section 65 and 65-B of the Indian Evidence Act, 1872, which read as under:-

“65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

*(a) when the original is shown or appears to be in the possession or power —
of the person against whom the document is sought to be proved, or
of any person out of reach of, or not subject to, the process of the Court, or
of any person legally bound to produce it,*

and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in 1[India] to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

“65B. Admissibility of electronic records. — (1) *Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original*

or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: —

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period;
or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period

shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —

- (a) identifying the electronic record containing the statement and describing the manner in which it was produced;*
- (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;*
- (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.*

(5) For the purposes of this section, —

- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;*
- (b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;*
- (c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.*

Explanation.—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]”

9) Section 65 of the Indian Evidence Act is mainly for the purpose of treating the document as secondary evidence depending upon the availability of the conditions mentioned therein.

10) Section 65-B of the Act is for the purpose of treating the electronic goods as evidence.

11) One of the provisions of Section 65-B, particularly under Section 65-B(4), is that while accepting the electronic device, a certification is to be given by its custodian.

12) The purpose for making reference of these provisions is that the learned Court has assigned the reasons while rejecting the petition dated 20.12.2022 that the plaintiff could not produce any certification from Bank from where items were issued.

13) The aforesaid findings appear to be made on the premise that the petition so filed is under Section 65-B of the Indian Evidence Act. Since the provision of Section 65-B is with respect to production of electronic goods, but herein, as per the prayer made in the petition dated 20.12.2022, the electronic goods is not the subject matter, rather it is in the form of documents, i.e., the photocopies of four demand drafts bearing Nos. 070999, 256526, 256564 and 256565 issued by the State Bank of India, Pandra Branch, Ranchi drawn in favour of Maruti Udyog Ltd payable at Service Branch, New Delhi and two money receipts, which have been sought to be produced by way of secondary evidence, meaning thereby, the said documents will come under the fold of Section 65 and that is the reason the petition has also been filed under

Section 65 of the Indian Evidence Act, but the learned Trial Court, on misconception, has rejected the said petition having beyond the scope of Section 65 of the Indian Evidence Act.

14) This Court, therefore, while exercising the power conferred under Article 227 of the Constitution of India, is of the view that it is a case where the error is apparent on the face of the order dated 22.12.2022 is evident due to rejection of the petition on the premise of applicability of Section 65-B of the Indian Evidence Act, 1872.

15) Accordingly, the order dated 22.12.2022 is hereby quashed and set aside.

16) The learned Trial Court is directed to pass order afresh on merits, strictly in accordance with law.

17) With the aforesaid directions and observations, this petition stands disposed of.

18) Pending Interlocutory Applications, if any, also stand disposed of.

(Sujit Narayan Prasad, J.)

A.F.R.

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