IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE AMIT SETH

ON THE 17th OF JUNE, 2026

MISC. PETITION No. 5888 of 2022

MANGILAL AND OTHERS

Versus

NANDKISHORE SHARMA

Appearance:

Shri Mahesh Goyal - Advocate for the petitioners.

Shri Naval Kumar Gupta - Senior Advocate with Shri Anugrah Gupta - Advocate for the respondent.

ORDER

1. The instant Misc. Petition filed under Article 227 of the Constitution of India takes exception to the order dated 14.09.2022 (Annexure P/1) passed by the First Additional Civil Judge, Senior Division, Sabalgarh, District Morena, whereby during the course of evidence of Mangilal (DW/1), the prayer made by the petitioners seeking permission to get the CD marked as an exhibit has been rejected.

2. The petition also challenges the order dated 29.10.2022 passed by the same Court whereby, during the course of evidence of Rahul Solanki (DW/2), a similar prayer made by the petitioners for getting the same CD marked as an exhibit has been rejected on the ground that the said prayer already stood rejected during the course of evidence of Mangilal (DW/1).

3. Brief facts leading to filing of the petition are as under:-

3.1 The respondent/plaintiff instituted a suit for declaration and permanent injunction in respect of 2025 sq.ft. of land forming part of Survey No.1117/1

situated at Kasba Kailaras, Tehsil Kailaras, District Morena (M.P.). The petitioners/defendants herein have also filed their counter-claim in the said civil suit seeking a relief of declaration and permanent injunction on the ground that they have been in possession of the suit property since the year 1984.

4. During the course of trial, an application under Order 14 Rule 1 of the Code of Civil Procedure, 1908 [hereinafter referred to as "**CPC**"] was filed by the petitioners seeking to take on record a CD prepared by the videographer. Along with the said application, an certificate under Section 65-B of the Indian Evidence Act, 1872 [hereinafter referred to as "**Evidence Act**"] was also filed. The said application was allowed by the learned trial Court vide order dated 12.09.2022 with an observation that the admissibility of the said CD in evidence shall be considered at the stage of evidence.

5. The examination-in-chief of Mangilal (DW/1) was conducted on 14.09.2022 and during the course of his examination-in-chief, he sought leave of the learned trial Court to get the said CD marked as an exhibit, which prayer has been rejected by the learned trial Court on the ground that the certificate under Section 65-B of the Evidence Act furnished along with the said CD does not fulfil the requirements of law and, therefore, the said CD, being inadmissible in evidence, cannot be permitted to be marked as an exhibit.

6. During the course of examination-in-chief of Rahul Solanki (DW/2) recorded on 29.10.2022, a similar prayer was made on behalf of the petitioners with respect to the same CD, which was also rejected on the ground that the admissibility of the said CD in evidence already stood considered and rejected during the course of evidence of Mangilal (DW/1). These orders dated 14.09.2022 and 29.10.2022 are under challenge in the present petition.

7. The learned counsel appearing for the petitioners submits that the

certificate furnished along with the CD and in support of the application under Order 14 Rule 1 CPC (Annexure P/7) clearly certified that the deponent therein (DW/2) runs a shop in the name of Rahul Computer and had prepared the CD in his shop on the date mentioned therein. The length of the video clips are 1 minute 40 seconds, 1 minute 24 seconds and 1 minute 42 seconds and while transferring the said video clips from the mobile phone of Mangilal, he has neither altered nor edited the same and the subject matter of the video clips remained as it is.

8. He further submits that once the said documents were permitted to be taken on record vide order dated 12.09.2022, the same could not have been denied marking as exhibits during the course of evidence. He submits that whether the evidence sought to be tendered through the said CD is legally admissible or not was an issue which was required to be considered at the time of final hearing; however, at the stage of evidence, the learned trial Court erred in declining to mark the said CD as an exhibit.

9. He further submits that the reasoning assigned by the learned trial Court for declining to mark the said CD as an exhibit in the impugned order dated 14.09.2022 is vague and baseless. Merely stating that the certificate furnished along with the said CD does not fulfil the requirements of law is not a reason enough to decline marking of the said CD as an exhibit.

10. Accordingly, he prays that the orders impugned in the petition deserve to be set aside and the prayer made by the petitioners for admitting the CD and the certificate in evidence and marking the same as exhibits be allowed in the interest of justice.

11. On the other hand, learned Senior Counsel appearing for the respondent submits that Rahul Solanki (DW/2), whose certificate under Section

65-B of the Evidence Act was furnished by the petitioners along with their application filed under Order 14 Rule 1 CPC, was examined on 29.10.2022. In his evidence (Annexure P/2), he deposed that he does not know the person from whose mobile phone the video clip was transferred to his computer for preparation of the DVD. He further stated that he had not played the DVD and, therefore, did not know the nature of the video contained therein. He also stated that he does not know to whom the mobile phone belonged or who was using the said mobile phone.

12. The learned Senior Counsel further submits that in view of the evidence of the petitioners' own witness, who furnished the certificate under Section 65-B of the Evidence Act along with the CD, the secondary evidence sought to be led by the petitioners is itself been rendered inadmissible. Therefore, no error was committed by the learned trial Court in declining to mark the said CD as an exhibit on the ground that the certificate furnished under Section 65-B of the Evidence Act along with the CD does not fulfil the requirements of law. Accordingly, he submits that the petition deserves dismissal.

13. Heard learned counsel for the parties and perused the record.

14. Before adverting to the merits of the present case, it is pertinent to set out the relevant provisions of the Evidence Act as well as the Information Technology Act, 2000 [hereinafter referred to as "**IT Act, 2000**"].

15. Section 3 of the Evidence Act defines “document” as follows:

> *“3. … “Document”.— “Document” means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.”*

Moreover, the word “Evidence” in Section 3 is defined as follows:

> *“3. … “Evidence”.— “Evidence” means and includes— (1) all statements which the court permits or requires to be made before it by*

witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence; (2) all documents including electronic records produced for the inspection of the court; such documents are called documentary evidence."

16. Sections 65-A and 65-B of the Evidence Act read as follows:

*"**65-A. Special provisions as to evidence relating to electronic record.** — The contents of electronic records may be proved in accordance with the provisions of Section 65-B.*

***65-B. 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 of 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 sub-section 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."*

17. The following definitions as contained in Section 2 of the IT Act, 2000 are also pertinent:

> *"2. (1)(i) "**computer**" means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network;*
>
> *(o) "**data**" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer;*

> *(t) "**electronic record**" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;"*

18. In light of the above provisions and in the given facts and circumstances, the precise issue that falls for consideration before this Court is whether the Learned Trial Court's order declining to exhibit the CD tendered by the petitioners holding the same as inadmissible was in accordance with the requirements set out in Section 65-A and Section 65- B of the Evidence Act?

19. The Apex Court in ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1*** has culled out the principles pertaining to admissibility of electronic records before the trial Court. The Apex Court has held that that if the original device or document producing the electronic output itself is produced, the requisite certificate in Section 65-B(4) of the Evidence Act is unnecessary. However, where it becomes impossible to physically bring such original device to the court, then the only means of proving information contained in such eletronic record is that such electronic record must be in accordance with Section 65-B(1) of the Evidence Act. The relevant paras of ***Arjun Panditrao Khotkar (supra)*** reads as follows:

> *"20. Sections 65-A and 65-B occur in Chapter V of the Evidence Act which is entitled "Of Documentary Evidence". Section 61 of the Evidence Act deals with the proof of contents of documents, and states that the contents of documents may be proved either by primary or by secondary evidence. Section 62 of the Evidence Act defines primary evidence as meaning the document itself produced for the inspection of the court. Section 63 of the Evidence Act speaks of the kind or types of secondary evidence by which documents may be proved. Section 64 of the Evidence Act then enacts that documents must be proved by primary evidence except in the circumstances hereinafter mentioned. Section 65 of the Evidence Act is important, and states that secondary evidence may be given of "the existence, condition or contents of a document in the following cases …".*
>
> *21. Section 65 differentiates between existence, condition and contents of a*

document. Whereas "existence" goes to "admissibility" of a document, "contents" of a document are to be proved after a document becomes admissible in evidence. Section 65-A speaks of "contents" of electronic records being proved in accordance with the provisions of Section 65-B. Section 65-B speaks of "admissibility" of electronic records which deals with "existence" and "contents" of electronic records being proved once admissible into evidence. With these prefatory observations let us have a closer look at Sections 65-A and 65-B.

23. Section 65-B(1) opens with a non obstante clause, and makes it clear that any information that is contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document, and shall be admissible in any proceedings without further proof of production of the original, as evidence of the contents of the original or of any facts stated therein of which direct evidence would be admissible. The deeming fiction is for the reason that "document" as defined by Section 3 of the Evidence Act does not include electronic records.

24. Section 65-B(2) then refers to the conditions that must be satisfied in respect of a computer output, and states that the test for being included in conditions 65-B(2)(a) to 65-B(2)(d) is that the computer be regularly used to store or process information for purposes of activities regularly carried on in the period in question. The conditions mentioned in sub-sections (2)(a) to (2)(d) must be satisfied cumulatively.

25. Under sub-section (4), a certificate is to be produced that identifies the electronic record containing the statement and describes the manner in which it is produced, or gives particulars of the device involved in the production of the electronic record to show that the electronic record was produced by a computer, by either a person occupying a responsible official position in relation to the operation of the relevant device; or a person who is in the management of "relevant activities" — whichever is appropriate. What is also of importance is that it shall be sufficient for such matter to be stated to the "best of the knowledge and belief of the person stating it". Here, "doing any of the following things …" must be read as doing all of the following things, it being well settled that the expression "any" can mean "all" given the context (see, for example, this Court's judgments in Banwarilal Agarwalla v. State of Bihar [Banwarilal Agarwalla v. State of Bihar, (1962) 1 SCR 33 : AIR 1961 SC 849 : (1961) 2 Cri LJ 12and Om Parkash v. Union of India [Om Parkash v. Union of India, (2010) 4 SCC 17 : (2010) 2 SCC (Civ) 1]. This being the case, the conditions mentioned in Section 65-B(4) must also be interpreted as being cumulative.

33. The non obstante clause in sub-section (1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65-B, which is a special

provision in this behalf — Sections 62 to 65 being irrelevant for this purpose. However, Section 65-B(1) clearly differentiates between the "original" document — which would be the original "electronic record" contained in the "computer" in which the original information is first stored — and the computer output containing such information, which then may be treated as evidence of the contents of the "original" document. All this necessarily shows that Section 65-B differentiates between the original information contained in the "computer" itself and copies made therefrom — the former being primary evidence, and the latter being secondary evidence.

34. Quite obviously, the requisite certificate in sub-section (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where "the computer", as defined, happens to be a part of a "computer system" or "computer network" (as defined in the Information Technology Act, 2000) and it becomes impossible to physically bring such network or system to the court, then the only means of proving information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). This being the case, it is necessary to clarify what is contained in the last sentence in para 24 of Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] which reads as "… if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act …". This may more appropriately be read without the words "under Section 62 of the Evidence Act,…". With this minor clarification, the law stated in para 24 of Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] does not need to be revisited.

60. It may also be seen that the person who gives this certificate can be anyone out of several persons who occupy a "responsible official position" in relation to the operation of the relevant device, as also the person who may otherwise be in the "management of relevant activities" spoken of in sub-section (4) of Section 65-B. Considering that such certificate may also be given long after the electronic record has actually been produced by the computer, Section 65-B(4) makes it clear that it is sufficient that such person gives the requisite certificate to the "best of his knowledge and belief". [Obviously, the word "and" between knowledge and belief in Section 65-B(4) must be read as "or", as a person cannot testify to the best of his knowledge and belief at the same time.]

61. We may reiterate, therefore, that the certificate required under Section

65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , and incorrectly "clarified" in Shafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] . *Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor [Taylor v. Taylor, (1875) LR 1 Ch D 426] , which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose.*

73. The reference is thus answered by stating that:

73.1.Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , as clarified by us hereinabove, is the law declared by this Court on Section 65-B of the Evidence Act. The judgment in Tomaso Bruno [Tomaso Bruno v. State of U.P., (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54] , being per incuriam, does not lay down the law correctly. Also, the judgment in Shafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] and the judgment dated 3-4-2018 reported as Shafhi Mohd. v. State of H.P. [Shafhi Mohd. v. State of H.P., (2018) 5 SCC 311 : (2018) 2 SCC (Cri) 704] , do not lay down the law correctly and are therefore overruled.

73.2. The clarification referred to above is that the required certificate under Section 65-B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the court, then the only means of providing information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). The last sentence in para 24 in Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] which reads as "… if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act …" is thus clarified; it is to be read without the words "under Section 62 of the Evidence Act,…". With this clarification, the law

stated in para 24 of Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] does not need to be revisited.

73.3. *The general directions issued in para 64 (supra) shall hereafter be followed by courts that deal with electronic evidence, to ensure their preservation, and production of certificate at the appropriate stage. These directions shall apply in all proceedings, till rules and directions under Section 67-C of the Information Technology Act and data retention conditions are formulated for compliance by telecom and internet service providers.*

73.4. *Appropriate rules and directions should be framed in exercise of the Information Technology Act, by exercising powers such as in Section 67-C, and also framing suitable rules for the retention of data involved in trial of offences, their segregation, rules of chain of custody, stamping and record maintenance, for the entire duration of trials and appeals, and also in regard to preservation of the metadata to avoid corruption. Likewise, appropriate rules for preservation, retrieval and production of electronic record, should be framed as indicated earlier, after considering the report of the Committee constituted by the Chief Justices' Conference in April 2016."*

[Emphasis Supplied]

20. Therefore, in order to produce a CD containing the footage recorded from a mobile phone, it is mandatory to produce the requisite certificate under Section 65-B(4) of the Evidence Act so as to comply with the requirements set out in Section 65-B of the Evidence Act. It is because the CD in question is a copy of video clips originally recorded on the mobile phone of Mangilal (DW/1) and transferred to the computer at the shop of Rahul Solanki (DW/2) for the purpose of preparing the CD. The CD, therefore, is a "computer output" within the meaning of Section 65-B(1) and constitutes secondary electronic evidence. It is not in dispute that the original mobile phone being the device on which the information was first stored has not been produced before the Trial Court. The only way of admissibility of the CD, therefore, is mandatory compliance with Section 65-B(1) read with Section 65-B(4) of the Evidence Act, as held in ***Arjun Panditrao Khotkar (supra)***. Accordingly, it was mandatory in the facts of the present case, that a certificate be duly produced in compliance with the Section 65-B(4) of the

Evidence Act in order to make the CD admissible.

21. Though a certificate in this regard was indeed furnished by Rahul Solanki (DW/2), it remains to be examined that whether the said certificate is in accordance with the mandate of Section 65-B of the Evidence Act. The contents of the certificate as furnished by DW/2 are reproduced herein for ready reference:

"प्रमाणीकरण

धारा 165 बी साक्ष्य अधिनियम के तहत प्रमाणिकरण

1. मैं राहुल सोलंकी पुत्र गिर्राज सोलंकी निवासी रविदास कॉलौनी नेहरू डिग्री कॉलेज के पीछे सबलगढ का रहने वाला हूँ। ओर मेरी सबलगढ में थाने के पास राहुल कप्युटर (राहुल फोटो स्टूडियो) के नाम से मेरी दुकान है मैं यह प्रमाणित करता हूँ। कि मेरे द्वारा दिनांक. 1055/07/2022 को मेरी दुकान से 1 डि.व्ही.डी मेरे द्वारा तैयार की गई है। जो कि 1 मिनिट 40 सेकेन्ड की है। दुसरी 1 मिनट 24 सेकेन्ड की हैं तीसरी 1 मिनट 42 सेकेन्ड की है।

2. यह है कि वीडीयो क्लिप को मेने मांगीलाल बालमीक के मोबाइल से डी. व्ही.डी में ट्रासफर करते समय मेरे द्वारा कोई काट पीट अथवा परिवर्तन नही किया गया है वीडियो क्लिप की विषय बस्तु यथागत है एंव इलेक्ट्रोनिक अभिलेख के अन्तर बस्तु की सुद्धता को प्रभावित नही किया गया है।..."

22. The Apex Court in ***Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473*** which has been subsequently reiterated and affirmed in ***Arjun Panditrao Khotkar (supra)*** has held that the very admissibilty of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of conditions specified under Section 65-B(2) of the Evidence Act. The relevant paras of ***Anvar PV (supra)*** are reproduced herein:

> ***"14.*** *Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence 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 shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original.* ***The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the***

satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions under Section 65-B(2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to

electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

17. Only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45-A—opinion of Examiner of Electronic Evidence."

[Emphasis Supplied]

23. Accordingly, the certificate provided by Rahul Solanki (DW/2), when examined in lieu of the law laid down in ***Anvar (supra)*** reveals that it merely certifies that the CD was prepared at his shop by transferring the video clips from the mobile phone of Mangilal (DW/1) and further states that no editing, alteration or manipulation was carried out while preparing the CD. However, the certificate is silent with regard to the mandatory requirements prescribed under Section 65-B(2) of the Evidence Act. It neither certifies that the computer used for preparing the CD was regularly used for storing or processing information in the ordinary course of business nor states that the information was regularly fed into the said computer in the ordinary course of such activity. Likewise, there is no statement in the certificate to the effect that the computer was operating properly throughout the relevant period or that any malfunction, if any, did not affect the accuracy of the electronic record. The certificate also does not provide sufficient particulars of the device used for producing the electronic record as contemplated under Section 65-B(4)(b) of the Evidence Act.

24. The Apex Court in ***Anvar PV (supra)*** has held that only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, would the question arise as to the genuineness thereof. The same has been reiterated in ***Arjun Panditrao Khotkar (supra)*** wherein it was held that the

certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record. Therefore, the mandate of certificate under Section 65-B is intended to establish the source, authenticity and reliability of the electronic record before it is permitted to be read in evidence. This is because electronic records are inherently susceptible to alteration, editing and manipulation, and hence, strict compliance with the conditions incorporated under Section 65-B assumes significance. Accordingly, it is only upon proper compliance of the requirements under Section 65-B(2) and Section 65-B(4) that the electronic record acquires admissibility in evidence. Mere assertion that no editing or alteration has been carried out cannot substitute compliance with the statutory mandate contained in Section 65-B(2) and Section 65-B(4) of the Evidence Act. The certificate, accordingly, is deficient in fulfilling the mandatory requirements of Section 65-B(4).

25. Another submisssion advanced by the learned counsel on behalf of the petitioners that once the application under Order XIV Rule 1 CPC was allowed and the CD was taken on record, the Trial Court was bound to mark the same as an exhibit, also appears to be misplaced. The Trial Court's order dated 12.09.2022 reserved the question regarding admissibility of the CD as the plaintiff had raised a specific objection regarding its admissibility. It is settled law that an objection to the admissibility of the document should be raised before such document is admitted by the Court under Order 13 Rule 4 of CPC and the court is obliged to form its opinion on the question of admissibility and express the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence. In this regard, reliance may be placed upon the judgment of Apex Court in ***R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple, (2003) 8 SCC 752***, the relevant paras of which are reproduced as hereunder:

"19. Order 13 Rule 4 CPC provides for every document admitted in evidence in the suit being endorsed by or on behalf of the court, which endorsement signed or initialled by the Judge amounts to admission of the document in evidence. An objection to the admissibility of the document should be raised before such endorsement is made and the court is obliged to form its opinion on the question of admissibility and express the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence. In the latter case, the document may be returned by the court to the person from whose custody it was produced.

20. The learned counsel for the defendant-respondent has relied on Roman Catholic Mission v. State of Madras [AIR 1966 SC 1457] in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. 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. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of

> ***proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties****. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior court."*
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> [Emphasis Supplied]

26. Therefore, when the very admissibility of a document is dependent upon fulfilment of a statutory mandate, the Court is not precluded from examining such admissibility at the stage when the document is tendered in evidence. In the present case, admissibility of the CD itself was contingent upon compliance with Section 65-B of the Evidence Act. Therefore, the learned Trial Court cannot be said to have committed any error in examining whether the mandatory statutory requirements stood fulfilled before permitting the CD to be exhibited, that too, when a specific objection in this regard was raised by the plaintiff/respondent.

27. So far as the subsequent order dated 29.10.2022 is concerned, the same merely follows the earlier order dated 14.09.2022 whereby the prayer for exhibiting the CD had already been declined. Once the Trial Court had already decided upon the admissibility of the very same electronic record, no separate or independent order permitting the same document to be exhibited during the examination of another witness could have been passed unless the defects pointed out in the earlier order had been cured in accordance with law. Admittedly, no fresh certificate satisfying the requirements of Section 65-B of the Evidence Act was produced thereafter by the petitioner. Therefore, the order dated 29.10.2022 cannot be said to be suffering from any illegality.

28. In the considered opinion of this Court, therefore, the order dated 14.09.2022 and 29.10.2022 passed by the learned trial Court, impugned in the present petition, does not suffer from any palpable illegality or jurisdictional error warranting interference of this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. The Apex Court in the case of ***Shalini Shyam Shetty and another vs. Rajendra Shankar Patil, (2010) 8 SCC 329*** has held that where the view taken by the subordinate court/tribunal/authority is a possible view, the same is not ordinarily required to be interfered with while exercising jurisdiction under Article 227 of the Constitution of India.

29. Accordingly, the petition being bereft of merits fails and is hereby dismissed.

30. Pending application(s), if any, shall also stand disposed of.

(AMIT SETH)
JUDGE

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