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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 12.04.2023

+ CM(M) 576/2023

S GURBACHAN SINGH & ORS Petitioner

versus

GEETA ISSAR Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Nitin Mittal, Advocate alongwith
Mr. Kuljeet Singh, AR

For the Respondent : Mr. Rishi Sood, Advocate

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 17463-64/2023

1. Exemption is allowed, subject to all just exceptions.
2. The applications stand disposed of.

CM APPL. 17465/2023

3. This is an application seeking exemption from filing the Trial Court record.
4. At this stage, there is no requirement to summon the Trial Court record.
5. The application is disposed of accordingly.

CM(M) 576/2023 & CM APPL. 17462/2023 (Stay)

6. The petitioner challenges the order dated 21.02.2023 passed in RC/ARC No. 5210/2016 titled *Geeta Issar vs. S. Gurbachan Singh*, whereby the petitioners have been directed to cross-examine the witness of the respondent before the Local Commissioner on the basis of the photocopies of the documents, the originals whereof have been permitted to be filed subsequently.

7. Mr. Nitin Mittal, learned counsel appearing for the petitioner submits that the procedure as stipulated vide the impugned order is a unique procedure inasmuch as even before the original documents have been produced before the learned Trial Court or the Local Commissioner, the Court is expecting the petitioner to conduct cross-examination on those photocopies.

8. Learned counsel further submits that the learned Trial Court has also given the permission to the respondent to file those original documents of the photocopies at a subsequent stage. Learned counsel submits that this procedure is contrary to Section 62 of the Indian Evidence Act, 1872 (hereinafter as “Evidence Act”) and the cross-examination cannot take place on the basis of photocopies.

9. Learned counsel submits that the impugned order is a gross violation of the procedural norms and ought to be interfered with by this Court under Article 227 of the Constitution of India.

10. *Per Contra*, Mr. Rishi Sood, learned counsel appearing for the respondent submits that the learned Trial Court had considered the reasons of medical issue of the husband of the petitioner and also to ensure that there is no delay or protraction of trial, that the learned Trial

Court has passed such direction.

11. Learned counsel further submits that the cross-examination, if any, on the basis of the photocopies is obviously subject to the production of the original documents by the respondent and therefore, no prejudice would be caused to the petitioner by cross-examining the witness of the respondent.

12. Learned counsel submits that it is well settled law that the issues would be decided only on the basis of original documents and not otherwise and as such learned counsel submits that the impugned order is sustainable in law.

13. This Court has heard the arguments and has perused the impugned order placed on record.

14. It would be apposite at the outset to extract the provisions of Section 62 of the Evidence Act hereunder:-

“62. Primary evidence.—Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document; Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original. Illustration A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the

placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.”

From the aforesaid as also from the catena of judgments in respect of what a primary document would constitute, it goes without saying that only original documents constitute primary evidence and those photocopies which are otherwise proved by way of secondary evidence may also form substantial evidence which can, not only be proved but also be relied upon by the parties in a *lis*.

15. A perusal of the impugned order brings to fore the fact that the procedure as directed is contrary to Section 62 itself, as also to the law in that regard inasmuch as the cross-examination is a vital right of the party where the party is entitled to not only discredit the witness but also demolish the case of the other side on the basis of the documents also. It is well settled law that photocopies are inadmissible in evidence unless they are proved in accordance with Section 63 and 65 of the Evidence Act.

16. Having regard to the fact that no such occasion for proving documents by secondary evidence had arisen at all, the question of directing the petitioner to cross-examine the witnesses of the respondent on the basis of photocopies is absolutely contrary to the procedure known to law.

17. Another aspect which has to be considered is that in case after the cross-examination has been conducted by the petitioner, the respondent is unable to produce some documents in original, the cross-examination so far as those documents are concerned would become otiose and rendered nugatory.

18. This possibly cannot be the intent of the legislature while granting the right to cross-examine a witness to conduct cross-examination on speculative documents, which are yet to be determined as to whether they are admissible or inadmissible in law.

19. The procedure directed by the learned Trial Court is alien to law and is unsustainable as such. The impugned order cannot withstand a judicial scrutiny and is set aside.

20. The learned Trial Court is directed to ensure that the originals of the documents relied upon by the respondent are brought on record. The proper procedure, thereafter, be followed before the same are made part of the record, on which the cross-examination by the petitioner is to commence.

21. Till the time the aforesaid exercise is carried out, the learned Trial Court shall not pass any direction for conducting cross-examination of any witness of the respondent.

22. At this stage, learned counsel for the respondent submits that the original documents in possession of the respondent would be produced and placed on record before the learned Trial Court on 09.05.2023 when the matter is stated to be fixed.

23. In that view of the above matter, the petition and pending application is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J.

APRIL 12, 2023

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