

(2009) 05 DEL CK 0145

In the Delhi High Court

Case No : IA No. 5683 of 2008 in CS (OS) 516 of 2007

Aktiebolaget Volvo and Others

APPELLANT

Vs

R. Venkatachalam and Another

RESPONDENT

Date of Decision : 18-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 14, Order 11 Rule 15, Order 11 Rule 9, Order 13 Rule 1, Order 13 Rule 2
Evidence Act, 1872 — Section 3, 62, 63, 64, 65
General Clauses Act, 1897 — Section 3(18)
Penal Code, 1860 (IPC) — Section 29

Citation : (2009) 160 DLT 100 : (2009) 6 ILR Delhi 233 : (2010) 7 RCR(Civil) 531

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Praveen Anand, Diva Arora and Tanya Varma, for the Appellant; Amarjeet Singh and Navneet Momi, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—The question for consideration is, whether it is permissible in law to permit a party to a civil suit to file only photocopy of the document and exempt such party from placing the original document on the file of the court and merely to give inspection thereof to the opposite party at the time of admission/denial of documents and at the time of tendering the document into evidence and to put the Exhibit mark again on photocopy on the file of the court.

2. The plaintiffs in this suit for permanent injunction restraining infringement of trademark passing off etc. and for the ancillary reliefs of damages, delivery etc. have applied to permit the plaintiffs to rely on the photocopies and to produce the originals only for inspection at the time of admission/denial of documents. It is contended that the plaintiffs have filed only copies, as original documents are required in various litigations globally and hence it is not possible to file the

original documents in this court.

3. The defendants have contested the application by pleading that the prayer made therein is not maintainable in law; under Order 7 Rule 14 of the CPC the plaintiffs are required to file with the plaint documents on which they rely or sue; under Order 13 Rule 1 the parties are required to produce on or before the settlement of issues all the documents/evidence in original where the copies thereof had been filed along with the plaint; that the plaintiffs are thus not entitled to seek exemption from filing the original documents; that the production of the original documents is a mandatory requirement of law not only under CPC but under the Evidence Act as well as the Delhi High Court (Original Side) Rules. It is further pleaded that the plaintiffs have to prove their case by primary evidence on record and if photocopies are produced, it is not possible for the defendants to compare those with the originals. On merits, it is denied that the original documents are required as alleged by the plaintiffs and it is further contended that it is open to the plaintiffs to apply for certified copies of the documents, on the same being proved/exhibited.

4. The Counsel for the plaintiffs has in his submissions, relied on

A] The Mulla's CPC 17th Edition Volume-II Page 694 where in the commentary under Order 13 Rule 1 it is stated:

The word "produce" means not that the documents should be filed into the court, but that they should be with the parties in the court. This rule does not exclude the discretion of the court to receive documentary evidence at a subsequent stage of the proceedings.

For the first proposition aforesaid reference therein is made to Talewar Singh v. Bhagwan Dass (1908) 12 C WN 312.

B] The Law Lexicon by P. Ramanatha Aiyar, 1987 Edition wherein it is stated:

"TO PRODUCE" a thing or document to a person, means, to show it to him personally and does not involve the idea that the possession of it is to be parted with (as) a Railway passenger's duty to produce the ticket for inspection by the ticket examiner.

It has further been stated therein:

"Produced" is a word which has not got any exact legal meaning but which requires to have an interpretation placed upon it in the statute in which it is used. The requirement that something must be produced to the court does not mean that it must be physically produced in the court room. "Produced" means that the objects to which the order is going to be related must be properly identified as being the objects which were concerned in the offence and they must be available for the court to look at, if it wishes to do so.

C] Prem Kumari Vs. Sushil Kumari and Others etc., dismissing the revision against the order of the Trial Court exhibiting the photocopies. It was found that

the photo stat copies were duly compared and produced prior to the issues and the original had been produced at the time of recording of the evidence; in these circumstances, the putting of the Exhibit marks on the photocopies was upheld, especially since the originals were also directed to be retained in the court for cross examination.

However I must notice that there is no discussion on the various provisions of law in this judgment.

D] Sehgal Puri Pvt. Ltd. Vs. The National Newsprint and Paper Mills Ltd., D.B. holding that the object of Order 13 Rule 2 CPC is merely to prevent belated production of documents so that it may not work injustice to the defendant. In that case also the photocopies of the documents had been produced along with the plaint and had even been put up for admission and denial. In the circumstances, the production of originals at the stage of evidence was permitted.

Here also there is no discussion on the other provisions relating to production of documents.

E] Malkit Singh Vs. The Special Court N.D.P.S., Sri Ganganagar and Others, but which I do not find relevant to the question framed herein above.

5. The Counsel for the defendants besides reiterating the legal pleas aforesaid contained in the reply itself has contended that the plaintiffs admit being in power and possession of the documents and it is not the case of the plaintiffs that the originals have already been filed in any other court; that the plaintiffs have not come u/s 65 of the Evidence Act; that suits relating to trademark are generally upon documents and the plaintiffs cannot be exempted from filing the original documents; that the photocopies filed by the plaintiffs are secondary evidence. On merits it is contended that the documents filed are not such with respect whereunto plaintiffs can be exempted. It is contended that as far as the trademark certificates and other forms under the Trade Mark Rules are concerned, certified copies thereof ought to have been filed, photocopies of the magazines containing the advertisements of the plaintiffs are also not such documents in as much as, as many original magazine as plaintiffs can desire can be available; similarly with respect to the invoices showing the volume of business it is contended that it is not as if the plaintiffs have filed all the invoices; they have only filed sample invoices and can file originals thereof and can file other original invoices by way of sample in other courts. It is also contended that certified copies of the magazines/articles from the publishers ought to have been filed.

6. The Counsel for the defendants has referred to:

A R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another,

B] Sivasubramania Thevar Vs. Dewan Bahadur T.N.S. Theerthapathi, Zamindar of Singampatti,

C] Om Prakash Berlia and Another Vs. Unit Trust of India and Others,

But all of which again, I do not find relevant to the question posed by me above.

7. At the outset, I must state that, to hold that there is no power whatsoever in the court to exempt placing of the original document on the file of the court on the condition of the party offering the same for inspection in the court as and when required, is not found by me to be in consonance with the principles of convenience and expediency and with the times. The courts, increase in number whereof has not kept pace with the increase in population and development of trade and commerce which also leads to increase in litigation, are today overloaded and facing a crunch not only of manpower but also of sheer physical space and infrastructure. The court buildings/premises/infrastructure which were built and designed for a certain volume of litigation, are falling far short of the number of legal cases transacted therein. The persons handling the court files and/or the papers filed in the court work under tremendous time constraints and pressure and cannot be expected to take care or safety and preservation of the papers in the court file, as one would of his own. The papers filed, for being retained on the court file are punched not once or twice but several times. Often the papers are found to come loose from the court file and/or on repeated handling with torn corners. The documents which may be required to be filed in a lis may not merely be magazines or invoices as in this case but may be title documents to the immovable properties of the parties or of financial investments of the parties or as to educational qualifications/experience of parties and which may be irreplaceable qua the parties and loss/damages whereto may depreciate the value of the property/financial investments of the parties. The question posed above has to be adjudicated keeping all the said factors in mind and not merely the documents in the present case.

8. The courts today have undertaken an e-project, the vision whereof is a paper less court. Of course, the same is still a far cry. However, that being the vision, the law must evolve in consonance therewith and not to create impediments/obstacles in the same. In many countries, the filing of lis/claims in the court is through electronic media only without the advocate or the litigant physically visiting the court or filing a single paper therein. All this is not possible if insistence is made on filing of the original documents. It is possible today to scan the document and e-file it with the court and to simultaneously serve it on the opposing parties.

9. I am, therefore, of the view that if the provisions of the codified law so permit, it would be expedient to, where the court finds that the original document is such, the loss or damage whereto could cause irreparable loss or inconvenience to a litigant, to allow such original to remain in the safety of its owner/possessor and to allow filing of photocopy thereof only, with a condition on the party to produce the original for inspection as and when required.

10. Yet another reason which prevailed on me for even before considering the

provisions of law find the aforesaid to be more reasonable, was the advancement in science and technology which today allows the photocopy of the original to be as good/clear as the original, if not clearer. A number of times, it is difficult to distinguish between the original and the photocopy. Gone are the times when copies of the original were made manually either in hand or in type with inherent possibility of differences between the two. In those times, seeing the copy could not be the same as seeing the original. One could not have the impact of seeing the original by seeing such a copy. However, the process of photocopying has changed all that. The ocular inspection of a photocopy of a document is as good as of the original. The laws which were drafted in those times have to be interpreted in consonance with the present times and technology.

11. However, it still has to be seen where the aforesaid view is permissible under the relevant provisions of law, in as much as inherent powers of the court cannot be invoked in consistently with the specific provisions.

12. The CPC in

A] Order 5 Rule 7 provides for the summons to appear and answer to the defendant to also order to the defendant "to produce" all documents or copies thereof specified in Order 8 Rule 1A.

B] Order 7 Rule 14 provides that where a plaintiff sues upon a document or relies upon a document in his possession or power in support of his claim, he shall enter such documents in a lis and "shall produce it in court" when the plaint is presented by him. It further provides that a document which ought to be "produced in court" when the plaint is presented but is not produced shall not without the leave of the court be received on the hearing of the suit.

C] Order 8 Rule 1A imposes a corresponding obligation and places a corresponding bar on the defendant.

D] Order 11 Rule 14 provides for the court to at any time order "production" by any party of documents relating to any matter in question in suit.

E] Order 11 Rule 15 provides for giving inspection to the opposite party of the documents.

F] Order 11 Rule 9 provides for giving inspection of entries in business books, verified by affidavit.

Provisions aforesaid till now refer only to document.

G] Order 13 Rule 1 for the first time provides for the parties to "produce" before the settlement of issues "all the documentary/evidence in original where the copies thereof have been filed along with the plaint or written statement.

A reading thereof shows that the reference to the documents in the earlier provisions noticed above is not necessarily to original documents and the documents referred to in the earlier provisions could be copies.

H] Order 13 Rule 5 exempts the filing of original account books and permits filing of copies of entries therein insite of Order 13 Rule 1.

I] Order 13 Rule 9 provides for return of documents after disposal of the suit and expiry of time for appeal therefrom or earlier on filing of certified copy thereof.

13. Thus reference in CPC to documents, except in Order 13 Rule 1 is not necessarily to the original documents and includes copies within the document. Thus the contention of the Counsel for the defendant of Order 7 Rule 14 or Order 8 Rule 1A of the CPC requiring originals to be filed is not found to be correct.

14. Even otherwise "document" is defined in Black's Laws Dictionary 8th Edition inter-alia as something tangible on which words symbols or marks are recorded.

15. In Public Prosecutor, Andhra Pradesh Vs. T. Amrath Rao and Others, it was held that any decipherable information which is set down in the lasting form would be a document.

16. Section 3 of the Indian Evidence Act defines:

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.

Illustrations

A writing is a document

Words printed, lithographed or photographed are document

A map or plan is a document

An inscription on a metal plate or stone is a document

A caricature is a document

Stephen, in his Digest of Evidence defines document as any substance having any matter expressed or described on it by marks capable of being read.

17. Document is also defined in Section 3(18) of the General Clauses Act as including any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means which is intended to be used or which may be used for the purpose of recording that matter.

18. The definition of document in Section 29 of the Indian Penal Code is similar. I also do not find anything inconsistent with or deferent in the Delhi High Court (Original Side) Rules either.

19. From all the aforesaid definitions of document found by me, a photocopy or a copy would also be a document. Thus it cannot be said that the provisions of the CPC for filing of documents necessarily relate to original documents. The

legislature has used the word original only in Order 13 Rule 1 of CPC.

20. The next questions which arise are, as to whether under Order 13 Rule 1 of the CPC the original document has to be placed on the file of the court or to be merely given inspection of for admission/denial of documents; whether the Evidence Act while providing for proof of documents by primary evidence requires filing/placing of the original document on the record of the court.

21. There can be no manner of doubt that the Evidence Act providing in Section 64 thereof of proof of documents by primary evidence only means proof of the original document. Even though Section 62 defining the primary evidence as meaning the document itself, does not state original document but since Section 63 while defining secondary evidence includes "copies from the original" and "copies made from and compared with the original" it necessarily follows that only the original is primary evidence.

22. However, most importantly, Section 62 is as under:

62. Primary Evidence - Primary evidence means the document itself produced for the inspection of the court.

Thus even at the stage of proof, the requirement is only for production of the original for inspection of the court and not of filing of the original in the court. It cannot be argued that production for inspection of the court has to be necessarily by placing it on the file of the court. It can also be by producing it as and when directed by the court for inspection thereof.

23. When at the stage of proof of documents, the requirement u/s 62 of the Evidence Act is only of production of original for inspection of the court, Order 13 Rule 1 of the CPC requiring production of originals has to be necessarily meant as production of original for inspection of the court and not as filing of the original. Significantly, Order 13 Rule 1 also uses both expressions "produce" in connection with original and "filed" in connection with the copies. The different expression used, together with definition/meaning of produce cited by Counsel for plaintiffs also lend me to hold that the original documents are only intended to be produced i.e. to be given inspection of while the copies are to be filed.

24. I, therefore, find that the scheme of the aforesaid legislative provisions also permits production of originals for inspection only and filing of copies only.

25. However, Order 13 Rule 4 CPC and the practise directions in the trial of suits issued by this court, also provide for making of endorsement on documents admitted in evidence. The document which is admitted in evidence is the primary document i.e. the original. Is the endorsement of exhibit mark to be made on original only which would again mean placing it on court record? In my view No. These provisions are procedural. When the substantive law permits only production for inspection of original, once that has been done, the endorsement/exhibit mark can be put on copy on court record also.

26. The aforesaid should not be understood as laying down that in all cases the filing of photocopies is enough. If the document is doubtful or for any other reason required by the court to remain in original on the file of the court, the court can always direct so and a party cannot insist on filing of copy only. There may be other instances where filing of the original is necessary, as in the case of documents like Will, Agreements which may be terminated/cancelled by destruction. The courts can in such cases insist upon the original being filed on the record.

27. I, therefore, answer the question posed by me in opening paragraph in the affirmative and in law there is no impediment to granting the application.

28. The next question is whether in the facts and circumstances of the present case the application should be granted. Though the arguments of the Counsel for the defendant of it being possible to file magazines/article in original in as much as several copies of the same can be available is attractive but impractical. In the normal course, a litigant may not retain a large number of copies of the magazines/articles and may retain a single or a few copies only for future use. It is very difficult for a litigant to long after the date of publication approach the publisher for other copies of the newspapers, magazines and articles. The same is the position of the invoices. The various laws i.e. the Income Tax Laws and the Companies Act provide for the duration for which the records are to be preserved. The parties may beyond the said terms retain a few/sample records for further use. It thus cannot be said that same invoices can be filed in each court.

29. Even otherwise I do not find the present case to be such where any of the documents is doubtful. The Counsel for the defendants has also not pointed out anything in this regard. The files of the court also bulge up with copies as well as originals being filed. In the present case, I do not see any prejudice which could be caused to the defendants, especially when the plaintiffs are themselves offering to produce the original for inspection of this court or of the defendants whenever so directed.

30. As far as the contention of the Counsel for the defendants of it being inconvenient and physically impossible to compare all the documents, I find that even if originals are to be filed in the court and photocopies thereof given to the defendants, the defendants before admitting/denying the originals on the court file will have to satisfy themselves that the photocopies given to it tally with the originals. I do not thus find that any inconvenience will be caused to the defendants by following the procedure aforesaid.

31. The application is therefore allowed.