

(2002) 01 RAJ CK 0073

In the Rajasthan High Court

Case No : Civil Revision Petition No. 197 of 1999

Hindustan Engineering Company

APPELLANT

Vs

Bhagwanlal Agrawal (deceased by L.R's) and Another

RESPONDENT

Date of Decision : 14-01-2002

Acts Referred:

Evidence Act, 1872 — Section 65

Citation : AIR 2003 Raj 198 : (2002) 2 CivCC 183

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Advocate : Arvind Samdariya, for the Appellant; Rameshwar Chouchan, for the Respondent

Final Decision : Allowed

Judgement

Prakash Tatia, J.—Heard learned counsel for the parties. By impugned order dated 27th Jan. 1999 the application u/s 65 of the Indian Evidence Act filed by the defendant was dismissed by the trial Court on the ground that defendant is seeking permission to produce secondary evidence with respect to an application alleged to have been submitted the Rajasthan State Electricity Board. This application was dismissed by the trial Court on the ground that on earlier occasion the trial Court summoned the record of the RSEB, Bhilwara and found that in that file the alleged application is not available. Therefore, the learned trial Court held that when there is no original application available in the record then the defendant could not have photostat copy of the original and it makes the documents suspicious.

2. Learned counsel for the petitioner submitted that the trial Court committed illegality in rejecting the application u/s 65 of the Indian Evidence Act, If the original is not available in the file of the RSEB, for this reason the defendant-petitioner cannot be deprived to produce the secondary evidence because of the fact that secondary evidence can be produced even for the lost documents. The plaintiff will have full opportunity to meet with this document and may also be

permitted to lead evidence in rebuttal of evidence of the defendant.

3. Learned counsel for the non-petitioner vehemently submitted that when original document is not available in the file of the RSEB as found by the trial Court in its earlier order and the trial Court held that the defendant is delaying the proceedings of the suit, therefore, the trial Court was justified in dismissing the application u/s 65 of the Evidence Act.

4. A secondary evidence with respect to the document can be produced by the parties in circumstances and one of the circumstance is that when document is not in power and possession of the party relying upon the document and unable to obtain from the party in whose possession the document is. Not only this, but even if a document is lost, the permission to produce secondary evidence for the post document can be granted. So far as that the original copy is not even available in the file of the RSEB, Bhilwara is concerned, it is only shown that document is not available in the office of the RSEB, Bhilwara even then the defendant can prove that, in fact, the application was actually submitted and the circumstances in which the document is not available in the file of the RSEB, Bhilwara. The document, in fact, was submitted in the office of the RSEB or not and the question whether, the same was in existence or not are required to be decided by the trial Court after giving opportunity to lead evidence wherein both the parties will be free to lead evidence. If the Court comes to the conclusion, after the evidence that, in fact, the original document was in existence then this copy of the document, if found to be correct and true copy of the original, this document and its effect will be considered while deciding the suit.

5. Therefore, at this stage, the trial Court has committed an illegality in dismissing the application of the defendant without holding any enquiry with respect to the existence of the document in question and the correctness of the copy of the original produced by the defendant. All these can be done along with the proceedings in the trial of the suit itself and the documents could have been admitted in evidence subject to final decision of the existence of the original document and whether the copy, which is alleged by the defendant is true and correct of the above document or not is to be decided after the evidence of the parties while deciding the suit itself.

6. With above observation the revision petition of the petitioner is allowed.

7. The order dated 27th Jan. 1999 is set aside. The application of the defendant u/s 65 of the Indian Evidence Act is allowed subject to the condition that it can be acted upon only after trial of the suit the trial Court comes to the conclusion that original document was in existence and the copy produced by the defendant-petitioner is true and correct of the original. The non petitioner shall also have right to rebut the above document.