

(1982) 06 BOM CK 0028
In the Bombay High Court
Case No : Suit No. 1108 of 1981

Om Prakash Berlia and Another

APPELLANT

Vs

Unit Trust of India and Others

RESPONDENT

Date of Decision : 28-06-1982

Acts Referred:

Companies Act, 1956 — Section 159, 164, 610, 75
Evidence Act, 1872 — Section 61

Citation : AIR 1983 Bom 1 : (1983) 54 CompCas 136 : (1982) 3 CompLJ 89 : (1983) MhLj 339

Hon'ble Judges : Bharucha, J

Bench : Single Bench

Advocate : K.S. Cooper, G.A. Thakkar, A.N. Mody and V.C. Kotwal, for the Appellant; F.S. Nariman, R.P. Bhat, I.M. Chagla, R.A. Dada, D.R. Dhanuka, Ashok Desai, T.R. Andhyarujina and G.E. Vahanvatti, for the Respondent

Judgement

1. The question to be decided arises in the contest of a copy of the return of allotments filed by the 8th Defendants. Company with the Registrar of Companies and an extract of the Annual Return also so filed, both certified to be true by the Registrar under S. 610 of the Companies Act. The said true copy and extract have been admitted on record as the 1st defendants exhibits (at Exhibits 17 and 18). The question is: is the truth of their contents established prima facie as Mr. Nariman, learned counsel for the 1st defendants contends, or must the truth thereof be proved?

2. It is necessary to set out the relevant provisions of the Evidence. Act. In Section 3 a document is defined as 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. Again in Section 3, a fact is said to be proved when after considering the matters before it, the Court either believed it to exist or considers its existence so probable that a prudent matter ought, under the circumstance of the particular case, to act upon the supposition that it exists. Section 59 states

that all facts except the contents of documents, may be proved by oral evidence. Section 65, under the heading "Of Documentary Evidence states that the contents of document may be proved either by primary or secondary evidence. Section 62 states that primary evidence means the document itself produced for the inspection of the Court. Sec 63 relates to secondary evidence and states that secondary evidence includes, inter alia, certified copies given under the provisions therein after contained in the Act and oral accounts of the contents of a document given by some person who has himself seen it. Section 64 requires that documents must be proved by primary evidence except in the cases thereafter mentioned. Section 65 relates to those cases and states that secondary evidence may be given of the existence condition or contents of a document. It states that it is only when the original is a public document within the meaning of Section 74 that a certified copy of it, but no other kind of secondary evidence, is admissible. Section 67 requires that if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the documents as is alleged to be in that persons" handwriting must be provided to be in his handwriting,. Section 74 to 78 are in relation to "Public Documents" and are "the provisions thereafter contained" mentioned in S. 63. Section 74 sets out what document are public documents. Sub-Section (1) states that documents forming the acts, records of the acts of the sovereign authority, of official bodies and Tribunals, and of public officers, legislative, judicial and executive, are public documents. Sub-section (2) states that public records kept in any State of private documents are public documents Under. S 76 every public officer having the custody of a public document is obliged to give any person on demand a copy of it together with a certificate that it is a true copy of such document or part thereof; such copies so certified are called certified copies. Under S. 77 such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies. Section 79 to 90 are under the head of "Presumptions as to documents" Section 79 deals with certified copies; it provides that the Court shall presume to be genuine every documents purporting to be a certificate, certified copy, or other documents, which is by law declared to be admissible as evidence of any particular fact. and which purports to be duly certified by an officer of the Government. Under its provisions the Court shall also presume that any officer by whom such documents purports to be signed or certified held, when he signed it, the official other character which the claimed. the only section under this head which requires the presumption of the accuracy (or truth or correctness) of the documents to be drawn is S. 83; thereunder the Court shall presume that maps or plans purporting to be made by the authority of the Central or any State Government were so made and are accurate.

3. Much depends upon the interpretation to be given to the expression "the contents of documents" in the Act. It was contended at first by Mr. Nariman that that expression wherever used in that Act meant the truth of the contents of documents. When, however, the Court pointed out to him the provisions of S. 63.

(5), Mr. Nariman submitted that at least in Ss. 61 and 77 that expression bore that meaning,. being linked to "proved" in S. 61 and to "proof" in Section 77.

4. Maxwell on the Interpretation of Statutes, 12th Edn., states (at page 278) that it is reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act.

5. Section 63 states that secondary evidence includes an oral account of the contents of documents given by some person who has seen it. That person does not give evidence of the truth of the contents of the documents merely by reason of having seen it, but of what he saw. In Section 63, therefore, the expression "the contents of a documents" must mean only what the documents states. Section 61 provided that the contents of documents may be proved either by primary or by secondary evidence. The expression in S. 61, must therefore, also mean what the documents states, and not the truth of what the documents states.

6. Secondly, Ss. 61 and 62 read together show that the contents of a document must, primarily, be proved by the production of the documents itself for the inspection of the Court. It is obvious that the truth of the contents of the documents, even prima facie, cannot be proved by merely producing the documents for the inspection of the Court. What is states can be so established.

7. Thirdly, it is laid down that the writer of a documents must depose to the truth of its contents. Three judgments must be noted in this connection.

8. In *Bishwanath Rai Vs. Sachhidanand Singh*, , the Supreme Court said this (at p. 1953):

"..... The contents of this letter were proved by the evidence of Ram Chandra Sharma who stated that he knew the handwriting of Swamiji with whom he had had correspondence even earlier. His evidence, thus, was sufficient to prove that Swamiji wrote this letter to Ram Chandra Sharma, and that the statement contained in the letter were made by Swamiji himself. It is true that, in the absence of examination of Swamiji, the correctness of those statements cannot be held to be proved. Thus, the evidence of Ram Chandra Sharma proves the contents of the letter, but not the correctness of those contents"

9. In the well known Bombay case of *Madholal Sindhu Vs. Asian Assurance Co. Ltd. and Others*, , N. H. Bhagwati, J., held that it was futile to merely prove the signature or the handwriting of the person who had signed or written various documents without calling that person, who was the only person who could depose to the correctness of the contents of those documents.

10. In the case of *Mohammed Yusuf and Another Vs. D. and Another*, , a Division Bench of this Court approved the decision in *Madholal Sindhu's* case and held that the evidence of the contents documents a documents was hearsay evidence unless the writer thereof was examined before the Court.

11. Fourthly, Section 67 of the Act requires the proof of the handwriting or signature upon a documents. If by mere production of the original documents for the inspection of the Court the truth of its contents was proves prima facie, the requirement of proof of the handwriting and of signature upon it would be almost superfluous.

12. The Act requires, first. the production of the original documents. If the original documents is not available, secondary evidence may be given. This is to prove what the documents states. Upon this the documents becomes admissible, except where it is signed or handwritten, wholly or in part. In such a case the second requirement is, under S. 67, that the signature and handwriting must be proved. Further, where the party tendering the documents finds it necessary to prove the truth of its contents, that is the truth of what it states, he must documents so in the manner he would prove a relevant fact. As the case of *Bishwanath Rai Vs. Sachhidanand Singh*, ; *Madholal Sindhu* (AIR 1954 Bom 305); and *Mohammed Yusuf and Another Vs. D. and Another*, indicate, this is generally done by calling the author of the documents.

13. It will have been noticed that the production of certified copies under the provisions of S. 63 is a means of leading secondary evidence. Secondly evidence can, obviously, be led only what the documents states, not as to whether what the documents states is true. Under S. 65(e), secondary evidence may be given when the original is a public documents within the meaning of S. 74 and only a certified copy of the public documents is admissible. Secondary evidence of a public documents so led only proves what the documents states, no more. In other, words, he who seeks to prove a public documents is relieved of the obligation to produce the original. He can produce instead a certified copy. All other requirements he must still comply with.

14. In this context this Court's judgment in *C.H. Shah Vs. S.S. Malpathak and Others*, , must be noted. the Court was concerned with deciding whether the original of a public documents had to be proved in the same manner as any other documents. A consideration of the relevant provisions of the Evidence Act clearly showed the Court that the only difference which the Act made between public and private documents was in regard to the form of secondary evidence which is admissible, viz, a certified copy, and in regard to the presumption of the genuineness of the certified copy; in all other respect, no distinction was drawn by the Act between public and private documents.

15. In *Vithoba Savlaram v. Shrihari Narayan*, AIR 1945 Bom 319, Chagla, J., sitting singly, was concerned with the production of the certified copy of the registered mortgage-deed. He held that there was no doubt that by producing the certified copy the plaintiff proved the contents of the mortgage-deed but its execution was not so proved. The portion of the judgment with which we are here concerned reads thus:

"..... All that the Evidence Act does not is that it permits secondary evidence

to be given of the registered documents because it is a public documents within the meaning of Section 74, and under S. 77 it provides that certified copies may be produced in proof of the content of the public documents All that a certified copy does is that it authenticates the genuineness of the copy. The Court presume that the original documents had the same contents as the copy. It certainly does not prove the actual execution of the original documents"

16. In *Kashibai Martand Vs. Vinayak Ganesh and Others*, , the judgment in *Vithoba Savlaram*'s case came up for consideration before a Division Bench of the Court. The Division Bench pointed out that the attention of Chagla, J., had not been drawn to the relevant section of the Indian Registration Act whereunder a statutory presumption arose that the facts mentioned in the endorsements required to be made under S. 59 occurred as indicated in the endorsements. The judgment of the Division Bench did not, however, comment upon the aforesaid observations of Chagla, J. They still stand as good law.

17. Section 114 of the Evidence Act enables the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct an public and private business, in their relation to the fact of the particular case. The illustrations to the section state that the Court may presume, inter alia, that judicial and official acts have been regularly performed. In respect of public documents which form. the acts or records of the acts of the sovereign authority, official bodies and Tribunals, and of public officers, legislative, judicial and executive, the presumption can be and is, in fact, invariably drawn. it is necessary, however, to appreciate that the source of the presumption is S. 114.

18. A judgment of the Calcutta High Court must be noted in this connection. From its judgment in *Pattu Kumari Babi v, Nirmal Kumar Singh*, AIR 1939 Cal 569, the following passage is extracted:

".. .. The register of powers-of-attorney is maintained by the Registering Officer under certain rules made by the Inspector General of Registration u/s 69, Registration Act, 1908. Every entry in that register is therefore "a public documents" within the meaning of Section 74(1)(iii), Evidence, Act being "a documents forming the act or record of the act" of an executive public officer in the discharge of a statutory duty imposed upon him. It follows that a true copy of the entry (which by virtue of Section 76, Evidence Act, is a certified copy within the meaning of Section 63(1) is admissible as proof of the original entry by virtue of Section 65(e), Evidence Act. How far the original entry itself is good evidence of the contents of the power-of-attorney is a slightly difference question. It is undoubtedly relevant u/s 35, Evidence Act. The weight to be attached to the entry depends upon the accuracy of the abstract of the power either which appears to be the sixth column of the entry. According to this abstract the power was a general power-of-attorney authorities the agent, inter alia, to adjust, compromise and submit and account, debts, claims, demands, and disputes touching any matters which only subsist or may arise between the

principle and Nirmal Kumar Singh Nawalakha; also to abandon or compromise any suit, actions or proceeding if the attorney thinks necessary; to appoint advocates, attorney, vakils, solicitors, pleaders, muktears, revenue agents and so forth. This abstract is as already mentioned. made by the Sub-Registrar in the discharge of his official duty and we think that the Court is entitled to presume its correctness is accordance with the usual presumption that official acts are regularly performed....."

19. The Court is also obliged to draw the presumption in regard to documents included in part I to the Schedule of the Commercial Documents Evidence Act that they have been duly made and that the Statement contained therein are accurate. In respect of documents included in Part II of the Schedule to that statue the Court is given discretion to presume that they were so made and that the statements. contained therein are accurate. Item 21 of Part II of the Schedule to that statute relates to a copy, certified by the Registrar of Companies, of the Balance Sheet, Profit and Loss Account, of the audit report of a company, filed with the said Registrar under the Indian Companies Act, 1913, and the rules made thereunder.

20. In Kashinath Sankarappa Wani Vs. New Akot Cotton Ginning and ; Pressing Co., Ltd., , the Supreme Court was concerned with a case where a copy of a balance-sheet filed by a company with the Registrar of Companies was rejected by the High Court. The Supreme Court observed that if the attention of the High Court had been drawn to Section 3 of the Commercial Documents Evidence Act and to Item No. 21 in Part II of the Schedule the High Court would not have rejected the copy of the balance-sheet obtained by the appellant from the office of the Registrar of Companies. The Supreme Court was of the opinion that the copy should have been admitted in evidence and it admitted the same. It then went on to consider whether it should presume the accuracy of its contents u/s 3 of the Commercial Documents Evidence Act and held that the High court would have been perfectly justified not raising the presumption in regard to the accuracy of the statement contained in the balance-sheet. Mr. Cooper, learned counsel for the plaintiff, placed reliance upon this judgment to submit that if under the provisions of Section 77, a certified copy of the balance-sheet was proved even as to the accuracy of its contents there was no reason for the Supreme Court to rely upon the Commercial Documents Evidence Act to the discretion therein given to the Court to draw the presumption of accuracy.

21. I now turn to the cases cites by Mr. Nariman. In Madamanchi Ramappa and Another Vs. Muthalur Bojjappa, , the High Court had interfered in second appeal upon the footing that a documents had not been proved an should not have been received in evidence. Before the Supreme court it was fairly conceded that this was erroneous. The Supreme Court observed that the Document in question, being a certified copy of the public documents,. need not have been proved by calling a witness. Having come to the conclusion that the documents had been correctly admitted on record, the Supreme Court held that the High Court should

not have interfered in the second appeal and upset the High Court order. No question arose before the Supreme Court of the truth of the contents of the documents.

22. In *P.C. Purushothama Reddiar Vs. S. Perumal*, , an election petitioner was before the Supreme Court . The question was whether the returned candidate had held election meetings on certain dates. Reports made by the police officers deputed to cover those meeting were marked without objection. Before the Supreme Court objection as to their admissibility was raised. The Supreme Court held that it was not open to the respondent to object to their admissibility. The next paragraph, paragraph 19, must be fully reproduced:

"19. It was next urged that even if the reports in question are admissible we cannot look into the contents of those documents. This contention is again unacceptable. Once a document is properly admitted, the contents of that document are also admitted in evidence though these contents may not be conclusive evidence".

Great stress was laid by Mr. Nariman upon the last sentence of this paragraph. It was contended that this meant that the truth of the contents of all documents which had been properly admitted in evidence was *prima facie* established. It was urged that the said copy and extract having been properly admitted the Court was obliged to consider the truth of the contents thereof as being *prima facie* established. It would not, I think, be permissible, to read the last sentence of paragraph 19 of the judgment as holding that in all cases where a document has been admitted on record it can be looked at on the basis that the truth of its contents has been established. *albeit prima facie*. I find it difficult to read this sentence as overruling the decision in *Bishwanath Rai Vs. Sachhidanand Singh*, or the decision of the High Court or nullifying distinction between proof of the contents of a document and proof of the truth of the content of the document if there is no discussion of the provisions of the statute of any earlier decision. The sentence must, as I see it be read in the context of the issues in the case and the paragraph that immediately precede and succeed it.

23. The judgment in *Ramanbhai Nagjibhai Patel v. Hswantsingh Udesingh Dabbi*, AIR 1979 SC 1162, was cited because it referred (in paragraph 13) to the decision in *P.C. Purushothama Reddiar Vs. S. Perumal*, . It is there stated only that counsel made a submission based upon that judgment. The case is of no assistance upon the point at issue.

24. In *Banamali Das Vs. Rajendra Chandra Mardaraj Harichandan and Others*, , the Supreme Court was again concerned with an election petitioner. The question was whether the returning officer had erroneously entered the results of the second round on Table No. 14 twice in the final tabulation, once as against the second round of Table No. 14 and once as against the second round of Table No. 13. The original check Memo of Table No 13 in which the result of the second round were entered was not produced during the trial but a certified copy thereof

was admitted in evidence, subject to an objection as to its admissibility. The Supreme Court held that there was no substance in the objection. The Check Memo which was required to be maintained by the officer in charge of the counting table was a document forming the record of the acts of the public officer and, therefore, a certified copy therefore given by the Collector in whose custody the documents was kept could be admitted in evidence in proof of the content of the original documents. That certified copy showed that an error had indeed been made. It was contended that this judgment showed that the certified copy of the public documents established the truth of the contents thereof. It will be noted that the question before the Supreme Court was whether the certified copy of the Check memo could be admitted in evidence. No contention was raised before the Supreme Court regarding the correctness of truth of the documents nor is there any discussion of this aspect in the judgment.

25. In *Tarit Kanti Biswas*, AIR 1918 Cal 988, the Court was concerned with a contempt petition. The alleged contempt was of the Chief Justice made in a newspaper article. As far as this discussion is concerned, the relevant question was whether two persons were directors of the company that published the newspaper and could be held liable for the contempt. There was before the Court a certified copy of a statement made by the company to the Registrar of Companies which showed the names of these two persons as directors. It was held by Woodroffe J. that the statement was a public record of a private document and, therefore, admissible. The objection then was that the signature of the executant of the statement was not proved. The learned Judge held that, assuming that the production of the certified copy was not such proof was necessary, it was not necessary here, for a person giving the name of one of the two alleged directors had signed the statement and, as the statement was accepted by the Registrar, it was common sense to assume that he was satisfied that it was made on behalf of the company. The reasoning of Woodroffe J. in this regard was accepted by all but one of the 5 learned Judges constituting the bench. The dissenting Judge, Mookerjee, J., held that although secondary evidence was admissible of a public document by way of its certified copy, the party who produced it was not relieved of his obligation to prove the execution of the document just as if the original had been produced, unless the case was covered by Section 90 of the Evidence Act, or the legislature had otherwise expressly excepted it. With the greatest respect to the four learned Judges, I find myself entirely in agreement with the view expressed by Mookerjee, J.

26. Mr. Nariman contended that the law on the point in India was what the law on the point in England was, viz., that a certified copy of a public document proved prima facie the truth of its contents. He relied upon Chapter 22 of Phipson on evidence, Twelfth edition. Paragraph 1051 states that a class of exceptions to the hearsay rule consists of statements contained in public or official documents which are in general prima facie, though not conclusive, evidence of the truth of the facts recorded, even against strangers. Paragraph 1052 states that for the purposes of civil proceedings the common law

exceptions to the hearsay rule have either been superseded or rendered statutory by the Civil Evidence Act, 1968. The provisions of the Evidence Act, to which I have made reference, lay down the position clearly. Thereunder a certified copy of a public document can be admitted as secondary evidence to prove only what the document states. The truth of what the document states must be separately established. That being so, I find it unnecessary to take recourse to the English law based originally on common law and now on the enactment of 1968.

27. In the result, I hold that the said copy and extract (Exhibits 17 and 18) do not establish, even prima facie, the truth or accuracy or correctness of the contents of their originals. They prove only what the contents of their originals are.

28. At this stage Mr. Nariman refers to Sections 159 and 164 of the Companies Act. He submits that the return (extract of which is at Ex. 18) is an annual return made by the 8th defendant company under the provisions of Section 164 such annual return is prima facie evidence of any matters directed or authorised to be inserted therein by the Companies Act. In Mr. Nariman's submission, the said extract prima facie establishes the truth of the contents of its original.

29. Mr. Cooper submits that the said extract can be prima facie evidence only of matters directed or authorised to be inserted therein by the Companies Act. He refers to the last page of the extract which sets out the names of the holders of privately placed convertible debentures, the number of debentures held by each of them, the number thereof as have been converted into equity shares, and the number of equity shares allotted on 5th June, 1979. He submits that all this information is in excess of the requirements of Section 159 makes reference to schedule V, Part 1; to the register of debenture holders; to the debentures; and to the debenture holders, past and present. It does not appear to me that there is, therefore, anything in excess in the annual return.

30. I now hold that the said extract (Exhibit 18) proves, by reason of Section 164 of the Companies Act, prima facie the truth of the contents of its original

31. Ordered accordingly.