

(1982) 06 BOM CK 0002
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:

Commercial Documents Evidence Act, 1939 — Section 3
Companies Act, 1956 — Section 159, 164, 610
Evidence Act, 1872 — Section 114, 3, 35, 59, 61

Citation : (1983) MhLj 339

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Advocate : K.S. Kooper with G.A. Thakkar, A.N. Modh and V.C. Kotwal, for the Appellant; F.S. Nariman with R.P. Bhatt, I.M. Chagla and R.A. Dada for defendant No. 1, R.P. Bhatt with D.R. Dhanuka, I.M. Chagla and R.A. Dada for defendant No. 2, D.R. Dhanuka with R.A. Dada for defendants Nos. 3 and 4, I.M. Chagla with R.A. Dada for defendant No. 5, R.A. Dada for defendant No. 6, Ashok Desai with D.R. Dhanuka and R.A. Dada for defendant No. 7 and T.R. Andhyarujina with G.V. Vahanvatti for defendant No. 8, for the Respondent

Judgement

S.P. Bharucha, J.—The question to be decided arises in the context of a copy of the return of allotments filed by the 8th defendant Company with the Registrar of Companies and an extract of the Annual Return also so filed, both certified to be true by the Registrar u/s 610 of the Companies Act. The said true copy and extract have been admitted on record as the 1st defendant's 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 defendant 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 believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances 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 documents 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. Section 63 relates to secondary evidence and states that secondary evidence includes, inter alia, certified copies given under the provisions thereafter 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 document as is alleged to be in that person's handwriting must be proved to be in his handwriting. Sections 74 to 78 are in relation to "Public Documents" and are "the provisions hereinafter contained" mentioned in section 63. Section 74 sets out what documents are public documents. Sub-section (1) states that documents forming the acts, or 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. u/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. u/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. Sections 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 document purporting to be a certificate, certified copy, or other document, 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 document purports to be signed or certified held, when he signed it the official character which he claimed. The only section under this head which requires the presumption of the accuracy (or truth or correctness) of a document to be drawn is section 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 the Act meant the truth of the contents of documents. When, however, the Court pointed out to him the provisions of Section 63 (5), Mr. Nariman submitted that at least in Sections 61 and 77 that expression bore that meaning, being linked to "proved" in Section 61 and to "proof in Section 77.

4. Maxwell on the Interpretation of Statues, 12th edition, 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 a document given by some person who has seen it. That person does not give evidence of the truth of the contents of the document merely by reason of having seen it, but of what he saw. In Section 63, therefore, the expression "the contents of a document" must mean only what the document states. Section 61 provides that the contents of documents may be proved either by primary or by secondary evidence. The expression in section 61 must, therefore, also mean what the document states, and not the truth of what the document states.

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

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

8. In Bishwanath Rai Vs. Sachhidanand Singh, the Supreme Court said this;

.....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 correspondence even earlier. His evidence, thus, was sufficient to prove that Swamiji wrote this letter to Ram Chandra Sharma, and that the statements 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-know Bombay case of Madholal Sindhu v. The Asian Assurance Co. Ltd. 56 Bom. L R 147, 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 Mr. D. and Mr. S. 1967 Mh. L J 65=68 Bom. L R 228 a Division Bench of this Court approved the decision in Madholal Sindhu's case and held

that the evidence of the contents of a document 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 document. If by mere production of the original document for the inspection of the Court the truth of its contents was proved *prima facie*, the requirement of proof of the handwriting and of the signature upon it would be almost superfluous.

12. The Act requires, first, the production of the original document. If the original document is not available, secondary evidence may be given. This is to prove what the document states. Upon this the document becomes admissible, except where it is signed or handwritten, wholly or in part. In such a case the second requirement is, u/s 67, that the signature and handwriting must be proved. Further, where the party tendering the document finds it necessary to prove the truth of its contents, that is, the truth of what it states, he must do so in the manner he would prove a relevant fact. As the cases of Bishwanath Rai, Madholal Sindhu and Mr. D indicate, this is generally done by calling the author of the document.

13. It will have been noticed that the production of certified copies under the provisions of section 63 is a means of leading secondary evidence. Secondary evidence can, obviously, be led only of what the document states, not as to whether what the document states is true. u/s 65 (e), secondary evidence may be given when the original is a public document within the meaning of section 74 and only a certified copy of the public document is admissible. Secondary evidence of a public document so led only proves what the document states, no more. In other words, he who seeks to prove a public document 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 v. S.S. Malpathak* 1972 Mh. L J 816=74 Bom. L R 505, must be noted. The Court was concerned with deciding whether the original of a public document has to be proved in the same manner as any other document. 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 respects, no distinction was drawn by the Act between public and private documents.

15. In *Vithoba Savlaram Vs. Shrihari Narayan*, , Chagla J, sitting singly, was concerned with the production of the certified copy of a 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 so not proved. The portion of the judgment with which we are here concerned reads thus:

.....All that the Evidence Act does is that it permits secondary evidence to be given of a registered document because it is a public document within the meaning of section 74, and u/s 77 it provides that certified copies may be produced in proof of the contents of the public documents. AH that a certified copy does is that it authenticates the genuineness of the copy. The Court presumes that the original document had the same contents as the copy. It certainly does not prove the actual execution of the original document.....?

16. In *Kashibai Martand v. Vinayak Ganesh* A I R 1965 Bom. 65, the judgment in *Vithoba Savlaram*'s case came up for consideration before a Division Bench of this Court. The Division Bench pointed out that the attention of Chagla S. had not been drawn to the relevant sections of the Indian Registration Act whereunder a statutory presumption arose that the facts mentioned in the endorsements required to be made u/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. 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 and public and private business, in their relation to the facts 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 section 114.

17. A judgment of the Calcutta High Court must be noted in this connection. From its judgment in *Pattu Kumari Bibi Vs. Nirmal Kumar Singh Nawlakha*, , 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 document" within the meaning of section 74(1)(iii), Evidence Act, being "a document 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 different 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 which appears to be the sixth column of the entry. According to this abstract the power was a general power-of-attorney authorising the agent, inter alia, to adjust, compromise and submit any account, debts, claims, demands, and disputes

touching any matters which now subsist or may arise between the principal and Nirmal Kumar Singh Nawalakha; also to abandon or compromise any suit, actions or proceedings if the attorney thinks necessary; to appoint advocates, attorneys, 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 in accordance with the usual presumption that official acts are regularly performed.....

18. The Court is also obliged to draw the presumption in regard to documents included in Part 1 to the Schedule of the Commercial Documents Evidence Act that they have been duly made and that the statements contained therein are accurate. In respect of documents included in Part II of the Schedule to that statute 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, and audit report of a company, filed with the said Registrar under the Indian Companies Act, 1913, and the rules made thereunder.

19. In *Kashinath Sankarappa Want v. New Akot Cotton Ginning & Pressing Co. Ltd.* A I R 1958 S C 457, 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 its 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 in not raising the presumption in regard to the accuracy of the statements contained in the balance-sheet. Mr. Cooper, learned counsel for the plaintiffs, 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 and to the discretion therein given to the Court to draw the presumption of accuracy.

20. I now turn to the cases cited by Mr. Nariman. In *Madamanchi Ramappa and Another Vs. Muthalur Bojjappa*, , the High Court had interfered in second appeal upon the footing that a document had not been proved and 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 a public document, need not have been proved by calling a witness. Having come to the conclusion that the document 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's order. No question arose before the Supreme Court of the truth of the contents of the document.

21. In P.C. Purushothama Reddiar Vs. S. Perumal, an election petition 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 meetings were marked without objection. Before the Supreme Court an 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 document are also admitted in evidence though those 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 over-ruling the decision in Bishwanath Rai's case or the decisions of the High Courts or nullifying the distinction between proof of the contents of a document and proof of the truth of the contents of a document for there is no discussion of the provisions of the statute or of any earlier decisions. The sentence must, as I see it, be read in the context of the issues in the case and the paragraphs that immediately precede and succeed it.

22. The judgment in Ramanbhai Nagjibhai Patel Vs. Jashvant Singh Udesingh and Others, , was cited because it referred (in paragraph 13) to the decision in P. C. Purushothama Reddiar's case. 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.

23. In Banamali Das Vs. Rajendra Chandra Mardaraj Harichandan and Others, , the Supreme Court was again concerned with an election petition. 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 results 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 a public officer and, therefore, a certified copy thereof given by the Collector in whose custody the document was kept could be admitted in evidence in proof of the contents of the original document. That certified copy showed that an error had indeed been made. It was contended that this judgment showed that the certified copy of a public document 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 or truth of the document nor is there any discussion of this aspect in the judgment.

24. In *Parit Manti Biswas* A I R 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 where 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.

25. 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.

26. 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.

27. 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 159 and that 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.

28. 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 and its correctness cannot be *prima facie* established thus. 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.

29. I now hold that the said extract (Ex. 18) proves, by reason of section 164 of the Companies Act, *prima facie* the truth of the contents of its original.