

Civ DJ 516/2014

11961/16

MANOJ KUMAR Vs. SMT. LAXMI DEVI

13.01.2026

Present: Plaintiff in person.
Sh. I.S. Dahiya, ld counsel for the plaintiff through VC.
Defendant no. 3 in person.

Put up for order during the course of day.

(SHIV KUMAR)
DJ-02 (W)THC:Delhi
13.01.2026

At 3.15 PM.

Present: None.

(1) Vide this order, I shall decide the application filed on behalf of the defendant under Section 60 of BSA Act, 2023 (65 of Old Indian Evidence Act) to lead secondary evidence.

(2) The defendant has alleged that the documents pertaining to water connection installed in the house of the defendant are untraceable and could not be produced despite summoning witness from Delhi Jal Board.

(3) It is further averred alleged that the documents sought to be proved by way of secondary evidence are official documents. So, permission may be given to the defendant to prove the said documents by leading secondary evidence.

(4) Reply to the present application has been filed on behalf of the plaintiff.

(5) It is contended by the plaintiff that the present application is misconceived and has been filed with ulterior motive to delay the disposal of the case.

(6) It is further contended that the secondary evidence, which defendant wants to lead, is not of any evidenciary value as the plaintiff has sought the possession of the suit property, on the basis of documents, which were in the possession of the plaintiff before filing of present suit.

(7) Arguments heard. Case file perused.

(8) I have perused the judgement of Hon'ble High court of Delhi, passed in a case titled "Satyam Kumar Shah & Ors Vs Narcotic Control Beareu, AIR online, 2019, DEL 681 and the relevant paras of said judgement are reproduced as under:

4. *In my view, the application filed by the respondent NCB was misplaced inasmuch as no application is required to be filed by a party seeking permission under Section 65 Indian Evidence Act to lead secondary evidence.*

5. *Section 61 of the Indian Evidence Act lays down that contents of a document may be proved by primary or secondary evidence. Section 63 defines Secondary Evidence. Section 64 provides that documents must be proved by primary evidence, except in cases thereafter mentioned i.e. in Section 65, Section 65 A and Section 65 B.*

6. *Section 65, Indian Evidence Act, permits secondary evidence to be led in the contingencies mentioned therein. Section 65 does not contemplate filing of any application or seeking prior permission of the court for leading secondary evidence.*

7. *A party producing secondary evidence before a court has to satisfy the conditions mentioned in Section 65 of the Indian Evidence Act and only when the conditions of Section 65, Indian Evidence Act are satisfied, secondary evidence would be admissible.*

8. *While adducing secondary evidence, a party shall have to lead evidence firstly to show the existence of the contingency or situation stipulated in Section 65 and 65B, as the case may be and Secondly lead evidence in proof of the said document.*

9. Only after the evidence is led before the court, would the court be in a position to form an opinion as to whether circumstances/situation, as stipulated under Section 65 Indian Evidence Act, making secondary evidence admissible, exist or not.

(9) I have also produced judgement of the Hon'ble Supreme Court of India, passed in a case titled Dhanpat Vs. Sheo Ram (deceased) through Lrs & ors ,Civil Appeal No. 1960 Of 2020, decided on 19.03.2020 and the relevant paras of the said judgement are reproduced as under.

There is no requirement that an application is required to be filed in terms of Section 65(c) of the Evidence Act before the secondary evidence is led. A party to the lis may choose to file an application which is required to be considered by the trial court but if any party to the suit has laid foundation of leading of secondary evidence, either in the plaint or in evidence, the secondary evidence cannot be ousted for consideration only because an application for permission to lead secondary evidence was not filed.

(10) DW-11/Sh. Vikas, Junior Assistant from the office of Delhi Jal Board has deposed that the summoned record in respect of water connection is not traceable.

(11) In view of the abovesaid settled position of law as well as facts of the case, the present application stands allowed.

(12) The defendant is allowed to lead secondary evidence for proving the documents mentioned in the application but the burden will remain upon the defendant to prove that the evidence led by the defendant is admissible as secondary evidence to prove the said documents.

(13) Put up for leading DE on **09.03.2026**.

(SHIV KUMAR)
DJ-02 (W)THC:Delhi
13.01.2026