

KABC170031522025



**IN THE COURT OF LXXXV ADDL. CITY CIVIL & SESSIONS  
JUDGE, AT BENGALURU (CCH-86) (Commercial Court)**

**THIS THE 06<sup>th</sup> DAY OF MARCH 2026**

**PRESENT:  
SRI.ARJUN. S. MALLUR. B.A.L.LL.B.,  
LXXXV ADDL. CITY CIVIL & SESSIONS JUDGE,  
BENGALURU.**

**Com.O.S.1394/2025**

**PLAINTIFF:**

**M/s Aveo Pharmaceuticals Ltd.,**

**(Represented by Sri.Pradeep Darak, Advocate)**

**: Versus:**

**DEFENDANTS:**

**M/s Asees International Consultants Pvt. Ltd., & Others**

**(D1, D2 – Exparte, D3 Rep. by Sri.Jeevan K, Advocate)**

**ORDERS ON ADMISSIBILITY OF COPY OF THE MOU  
DATED 29.11.2016 WITH COPIES OF CHEQUES IN  
EVIDENCE BY WAY OF SECONDARY EVIDENCE**

During the course of further examination of PW1, after marking documents at Ex.P.1 to P.16 the plaintiff sought for marking of copy of the Memorandum of Understanding dated 29.11.2016 (MoU) to which counsel for the defendant strongly objected on the ground that the copy cannot be admitted in evidence as it is not primary evidence.

**2.** Thereafter learned counsels for both sides have been heard on admissibility of copy of MoU as secondary evidence. Counsel for the plaintiff has filed memo with citations.

**3.** The point for consideration is:

1. Whether the copy of the MoU dated 29.11.2016 with copies of the cheques attached to it can be admitted by way of secondary evidence as per Sec.58 of BSA, 2023?

**4.** My answer on the above point is in the **Affirmative** for the following:

**REASONS**

**5.** The plaintiff has filed this suit for recovery of a sum of Rs.2,00,32,840/- with interest at 12% per annum till realization. The claim is with respect to refund of the amount paid by the plaintiff amounting to Rs.1.00 crore which is paid under the MoU dated 29.11.2016 through 10 cheques of Rs.10.00 lakhs each. For the said amount the plaintiff is seeking interest of Rs.1,00,32,840/- @ 12% per annum from 01.04.2017 to 10.08.2025. The defendant No.3 has resisted the claim raising several defences. Necessary issues have been framed.

**6.** It is the specific contention of the plaintiff that the original of MoU dated 29.11.2016 is in the custody of the defendants. To that effect the plaintiff has pleaded in para 7 of the plaint. The defendant in his Written statement at para 6 though contends that the MoU is a non existent document, yet it is contended that it is a tampered instrument and further there is no default clause or there is any clause in the

MoU which makes the director personally liable for the claim. Also it is contended in the same para that clause 12 of the MoU absolves the defendant from any claims or liabilities. Thus, from the very pleadings in the written statement the defendant No.3 does admit execution and existence of MoU dated 29.11.2016. Importantly defendant No.3 does not specifically dispute or deny he being in possession of the original MoU dated 29.11.2016.

7. Sec.58 and 60 of BSA, 2023 which is similar to Sec.63 and 65 of the then Indian Evidence Act provides for circumstances where secondary evidence can be permitted to be led by the parties. The learned counsel for the plaintiff in support of his arguments has relied upon the judgment of the Supreme Court reported in **(2020) 5 Supreme Court Cases 178 Jagmail Singh and another -vs- Karamjit Singh and others** wherein with respect to the admissibility of the secondary evidence it has been observed as under:

“Under the Evidence Act, 1872 facts have to be established by primary evidence appears to

be in possession or power against whom the document is sought to be produced, or of any person out of reach of, or not subject to, the process of the court, or of any person legally bound to produce it, and when, after notice mentioned in Section 66 such person does not produce it. For secondary evidence to be admitted foundational evidence has to be given being the reasons as to why the original evidence has not been furnished. Where original documents are not produced without a plausible reason and factual foundation for laying secondary evidence not established it is not permissible for the court to allow a party to adduce secondary evidence. Merely the admission in evidence and making exhibit of a document does not prove it automatically unless the same has been proved in accordance with law”.

He also relied upon another decision of the Apex Court reported in **(2013) 10 SCC 758 Kalia -vs- State of Madhya Pradesh** wherein it is observed as under:

“Section 65(c) of the 1872 Act provides that secondary evidence can be adduced relating to a document when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason, not arising from his own default, or neglect, produce it in reasonable time. The court is obliged to examine the probative value

of documents produced in the court or their contents and decide the question of admissibility of a document in secondary evidence. However, secondary evidence of an ordinary document is admissible only and only when the party desirous of admitting it has proved before the court that it was in his possession or control of it and further, that he has done what could be done to procure the production of it. Thus, the party has to account for non production in one of the ways indicated in the section. The party further has to lay down the factual foundation to establish the right to given secondary evidence where the original document cannot be produced”.

**8.** The observations of the Apex Court in the above decisions makes it amply clear that photocopies of a document can be admitted in evidence as secondary evidence provided a foundation is laid with regard to non production of the original document or the absence of original document. In the present case the plaintiff has specifically pleaded in para 7 of the plaint that the original is in the possession of defendant. The defendant No.3 who is the only contesting defendant does not specifically deny he being in possession of the original MoU dated 29.11.2016. On the one hand the

defendant denies the very existence of the document and in the same breath he chooses to rely on the clauses of the same document to deny his liability. Defendant is trying to blow hot and cold at the same time which cannot be permitted.

**9.** The learned counsel for the plaintiff relies upon orders of our Hon'ble High Court of Karnataka reported in **2024 SCC online KAR 11956 Rashmi Francina Abraham -vs- Pavana Williams and another** wherein with respect to admissibility of the secondary evidence the Hon'ble High Court of Karnataka in para 5 has observed as under:

“It is well settled that if a party wishes to lead secondary evidence, the Court is obliged to examine the probative value of the document produced in the court or their contents and decide the question of admissibility of a document in secondary evidence. It is held that if secondary evidence is admissible, it may be adduced in any form in which it may be available, whether by production of a copy, duplicate copy of a copy, by oral evidence of the evidence are designed to provide relief in a case where a party is genuinely unable to produce the original through no fault of that party”.

**10.** The above observation makes it clear that the exception to the rule of primary evidence are for the purpose of providing relief in a case where a party is genuinely unable to produce the original through no fault of that party. In the present case when it has been specifically pleaded that the original MoU dated 29.11.2016 is in the possession of the defendant which is not specifically denied the plaintiff would definitely be not in a position to produce its original and therefore it would be just and proper to permit production of copy of the MoU dated 29.11.2016 in evidence as secondary evidence. In so far as proof of the instrument, needless to mention that mere production of the document would not amount to its proof. As regards the copies of the cheques attached to the MoU Ex.P.3 the certified bank statement clearly corroborates that all the 10 cheques have been encashed by the defendant. Hence, for these reasons I answer the point raised in **Affirmative** and pass the following:

**ORDER**

Copy of the MoU dated 29.11.2016 shall be admitted in evidence.

(Dictated to the typist directly on computer, corrected and then pronounced by me in open court on this the **06<sup>th</sup> Day of March, 2026**)

**(ARJUN. S. MALLUR)**  
**LXXXV Addl.City Civil & Sessions Judge,**  
**Bengaluru.**

The order is pronounced in Open Court (vide separate order). The operative portion of the said order is as follows:-

**ORDERS**

Copy of the MoU dated 29.11.2016 shall be admitted in evidence.

**LXXXV ACC & SJ, B'LURU.**

Having held the copy of MoU to be admitted in evidence, the instrument evidences transfer a sum of Rs.1.00 crore by way of 10 cheques of Rs.10.00 lakh each which has been encashed. The instrument is

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an unstamped instrument.

Posted for hearing both sides on requirement of payment of duty on the MoU by 12.03.2026.

**LXXXV ACC & SJ, B'LURU.**