

**IN THE COURT OF JUDGE, COMMERCIAL COURT
(DISTRICT JUDGE CADRE), COIMBATORE**

Present: **Thiru. K.Hariharan, M.L.,**
Judge,
Commercial Court (District Judge Cadre),
Coimbatore.

Thursday, the 24th day of April, 2025

I.A. No.7 of 2025
in
C.O.S.No.6 of 2023
(CNR No.TNCB22-000421-2023)

Tamilnadu Mercantile Bank Limited,
Coimbatore Main Branch

.... Petitioner / Defendant

// Vs //

M/s. Shri Dhanalakshmi Spinnitex (P) Ltd.,
Rep by its Managing Director C.Nataraiyan

.... Respondent / Plaintiff

The petition came up for final hearing before me on 23.04.2025 in the presence of Thiru.P.R.Ramakrishnan, Advocate for the Petitioner/defendant and M/s. Panchapakesan Associates, Respondent/plaintiff and upon perusing the records, hearing both sides and having stood over for consideration till this date, this court doth passed the following:-

ORDER

The petition has been filed by the petitioner/defendant seeking to grant leave to the petitioner to produce the petition mentioned documents as secondary evidence and to permit the petitioner to produce and exhibit Photostat copies of the said documents instead of the originals under Section 58 and 60 of Bharatia Sakshya Adhinyam.

2. The petitions averments which are found essential for the disposal of the petition is that:-

It is submitted that the petitioner has filed the copies of the following documents along with the written statement as documents No.4, 8, 9 & 10, which are:-

- (1) Requisition letter sent by the respondent / plaintiff dated 11.02.2016 as document No.4
- (2) Authorization letter by Natarajan and Leelavathi as documents No.8 & 9
- (3) Office copy of the complaint given by the petitioner to the Police as document No.10

It is submitted that the original of the above documents have been given by the petitioner / defendant bank to the police during the investigation and submit that the copies of the said documents are available with the petitioners / defendants.

It is submitted by the petitioner that these documents have not returned by the police and they are unable to ascertain the Office / Police station where the documents are retained. The petitioner further submits that the petitioner is not available with the original and submit that only the copy of the documents are available with the petitioner which was taken from the original by mechanical process which are taken before handing over the documents to the police official. In the above circumstances the petitioner has sought for to permit to adduce the secondary evidence.

3. By denying the petition averments the respondent/plaintiff has filed the counter. The sum and substance of the counter averments which are found essential for the disposal of the petitions are that:-

The respondent has filed the counter submitting that the respondent has denied the said documents and its execution and also its custody. It is the submission of the respondent that the petitioner ought to have the custody of the documents such as letter dated 11.02.2016 and authorization letter dated 30.03.2017 and they cannot claim that they only retained the photo copy, is submitted as false and vague contention. Further it is the contention that the person who is supposed to be in custody of the original is not entitled to produce the photo copy. Further the contention of the respondent that the petitioner has not submitted any records to show that the said documents were submitted before the Police department and they have retained the same. Further it is the contention that the petitioner has created the story for the sake of the application. Further it is the contention of the respondent that the petitioner ought to have obtained certified copies of the certain documents from the concern department and further submit that the relief sought for by the petitioner is impermissible. Further it is the contention of the respondent that the reasons stated by the petitioner do not fall within the ambit of Section 60 of BSA and submit that the documents are within reach of the petitioner and certified copies of the same can be obtained. Further it is the contention of the respondent that the enquiry of the

matter cannot be presumed to be pending before more than one police station. The respondent submit that when the existence of the documents have been denied by the respondent, it is the duty of the petitioner to prove the same by filing the original of the documents. Under the above circumstances, the respondent submit that the existence and the execution of the documents nor its contents cannot be proved without production of the original and sought for to dismiss the petition.

4. Point for consideration:-

- 1) Whether the petition under 58 and 60 of Bharatia Sakshya Adhiniyam could be allowed?

Point:-

5. The counsel for the respondent during the oral submission has submitted that the respondent has no objection for production of copy of the complaint given by the petitioner to the police official. The copy of complaint is filed along with the written statement as document No.10 and the same is considered to be permitted.

6. Further, it is the submission of the petitioner that the other three documents such as requisition letter, authorization letter which are filed as documents No.4, 8 & 9 in the written statement are the photo copies of the documents. The petitioner submit that the original of those three documents

have been handed over by the petitioner to the police official and also submitted that they are not in a position to get back those documents and for the said reason the petitioner has filed the petition seeking leave to adduce secondary evidence for the documents No.4, 8 & 9.

7. Adducing of secondary evidence can be permitted under the circumstances specified in Section 60 of the BSA. The documents which the petitioner seeks to file as secondary evidence are not admitted by the respondents. Hence, the circumstances specified under Section 60 (b), (c), (d), (e) and (g) do not attract. In the above circumstances, the petitioner is permitted to file the certified copy of the documents issued by the Police Authorities to whom the original document is submitted by the petitioner and is retained. In this petition the petitioner has not come forward to file the certified copy of the document nor has prayed for to produce the certified copy. Hence the application of Section 60 (f) of BSA will not attract to the factual circumstances.

8. If so, Section 60 (a) of BSA alone can be applied. In which Section 60 (a) (i) and 60 (a) (iii) also cannot be applied to the present factual circumstances of the proceedings. In the above circumstances, only Section 60 (a) (ii) alone can be applied that to, when the original of the document is shown to be in possession or power of any person who is out of reach of the petitioner or not subject to the process of the Court. It is not the contention of the petitioner that the documents are not subject to the process of the Court. Hence,

from the facts it could be presumed that the petitioner seeks for production of copy of the documents only for the reason that the documents are out the reach of the petitioner. If so, for the categories which falls within the Section 60 (a) of BSA, compliance under Section 64 of BSA is mandatory, unless it falls within the circumstances specified in the proviso to Section 64 of BSA. The circumstances specified in the proviso to Section 64 of BSA also do not attract to the petition mentioned three documents such as documents No.4, 8 & 9 of the written statement. Since Section 64 of BSA is not complied, this Court would consider that the petitioner seeking to produce the secondary evidence of the requisition letter and the authorization letter filed as documents No.4, 8 & 9, cannot be permitted.

9. Apart from that as per Order XI Rule 8 & 9 of C.P.C. as amended to the Commercial Courts Act, the petitioner being the defendant ought to have disclosed the line of custody of each documents and also the petitioner ought to have specified about the documents which are not in custody of the petitioner, which is also not complied by the petitioner in the written statement or in the truth affidavit / the statement of truth. Hence, this Court would consider that this petition could be partly allowed permitting the petitioner to file the copy of complaint filed as document No.10 as secondary evidence and for the relief sought for by the petitioner for other three documents, the petition is liable to be dismissed.

10. In the result, the petition is partly allowed permitting the petitioner to file the copy of document No.10 (in the written statement) as the secondary evidence. The relief sought for regarding filing the copy of other three documents as secondary evidence, the petition is dismissed. No costs.

Dictated to the Steno-Typist, computerized by him directly, Corrected and Pronounced by me, on the 24th day of April 2025.

sd / **Tr. K.Hariharan, M.L.,**
Judge,
Commercial Court,
(District Judge Cadre)
Coimbatore

List of Witnesses and Documents:- Nil

sd / **Tr. K.Hariharan, M.L.,**
Judge,
Commercial Court,
(District Judge Cadre)
Coimbatore