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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 10614/2018 & CM APPLs. 41335/2018 (*exemption*),
41336/2018 (*stay*), 41337/2018 (*condonation of delay*)

M/S MITTAL TRADING COMPANY AND ANR .. Petitioners
Through: Mr. Awadhesh Kumar, Adv.

versus

SHRI ASHOK KUMAR AND ANR. Respondents
Through: Mr. Pramod Kumar and
Mr.Shavej Khan, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER
% **05.10.2018**

CM. APPL.41335 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

CM APPL. 41337/2018 (condonation of delay)

The delay of 28 days in re-filing the petition is condoned.

The application stands disposed of.

W.P.(C) 10614/2018

Issue notice to show cause as to why rule *nisi* be not issued,
returnable on 25th February, 2019.

Counter affidavit be filed within four weeks with an advance
copy to the petitioners, who may file rejoinder thereto, if any, within
four weeks thereof.



CM APPL. 41336/2018 (for stay)

Issue notice, returnable on 25th February, 2019.

This writ petition assails an order, passed by the Labour Court, on an application filed by the respondent-workmen under Sections 65 and 66 of the Indian Evidence Act, 1872. Apparently, in this case, the respondents had filed photocopies of a document purported to be employment register of the petitioners, as well as a second document, showing the employment of the respondent with the petitioners in 2001.

The petitioners, on the other hand, alleged that these documents were forged and fabricated, and did not pertain to the petitioners at all.

Para 1 of the impugned order sets out the grounds on which the respondents moved the application under Sections 65 and 66 of the Indian Evidence Act, and reads thus:

“1. By this composite order, I shall dispose off two applications filed by two workmen i.e. Ashok Kumar and Vidhya in their respective cases against the same respondents u/s.65A and 66 of the Indian Evidence Act for calling original documents because the same were not in his possession. It has been submitted by A.R. for workmen that he had filed two claim petitions of workmen i.e. Ashok Kumar and Vidhya against the same management contending, that they were employed with the management since 1993 as well as 1985 respectively and they had worked with the management upto 08.03.2014 and 05.05.2014 the date when their services have been terminated illegally. According to him, the management had not disputed the fact that the claimant/workmen were not his employee. They had disputed the date stating that both the claimants were appointed as Helper (Ashok Kumar, Skilled worker and Vidhya, Packer) on 01.05.2012. Workmen had submitted that in their affidavit of evidence, they have placed on record photocopies of documents Form-G “See 15 Register employment and remuneration in colly containing 12 pages” which is Ex.PW1/H showing their employment with the



management even in the year 2001. He submitted that the original might have been in possession of the management, therefore, management be directed to produce the said record and in the absence of original of said documents, photocopies of those documents shall be exhibited in evidence treating as primary evidence.”

Sections 65 and 66 of the Indian Evidence Act read thus:

“65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

- (a) When the original is shown or appears to be in the possession or power—of the person against whom the document is sought to be proved, 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 the notice mentioned in section 66, such person does not produce it;
- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;
- (c) 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;
- (d) when the original is of such a nature as not to be easily movable;
- (e) when the original is a public document within the meaning of section 74;
- (f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in to be given in evidence; to be given in evidence;
- (g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection. In cases (a), (c) and (d), any secondary evidence of



the contents of the document is admissible. In case (b), the written admission is admissible. In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible. In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

66. Rules as to notice to produce.—Secondary evidence of the contents of the documents referred to in section 65, clause;

(a) shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:—
Secondary evidence of the contents of the documents referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case: Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—

- (1) when the document to be proved is itself a notice;
- (2) when, from the nature of the case, the adverse party must know that he will be required to produce it;
- (3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;
- (4) when the adverse party or his agent has the original in Court;
- (5) when the adverse party or his agent has admitted the loss of the document;
- (6) when the person in possession of the document is out of



reach of, or not subject to, the process of the Court.”

The Labour Court has allowed the application of the respondents, reasoning, in para 3 of the impugned order, thus:

“ I have heard the arguments at Bar and perused the record. Management had only disputed the date of joining. Workmen had claimed that they had worked with the management from 1993 and 1985 respectively while the management has claimed that the workmen had joined the management w.e.f. 01.05.2012. Workmen by moving the application submitted that he be allowed to exhibit the photocopies of Form-G showing their employment with the management even in the year 2001. He submitted that either the management is directed to produce the original record or they be allowed to exhibit the photocopies of those documents. Management had denied and stated that the above said documents have been forged and fabricated. However, the management had not stated anything about the number of employees as well as maintaining of any register of employees working under him in the year 2001 nor they had filed any of the documents to rebut the fact that the claimants were not their employee in year 2001. Therefore, the reply filed by the management seems to be just evasive as the management is not intending to file the original documents on record. Therefore, the applications of the workmen stand allowed and the documents produced by the workmen shall be exhibited in evidence and will be treated as primary evidence when the workmen will turn up for deposition.

A copy of this order is placed in each of the above case files.”

It is clear, on a reading of para 3 of the impugned order, that the indicia of Section 65 of the Indian Evidence Act had not been satisfied, so as to justify issuance of the impugned directions by the Labour Court. The reasoning adopted by the Labour Court is also not in sync with the said provision.

In the circumstances, there shall be an *ad interim* stay of the operation of the impugned order, dated 6th June, 2018,



passed by the Labour Court, till the next date of hearing.

A copy of this order be given *dasti* under the signatures
of the Court Master.

C.HARI SHANKAR, J

OCTOBER 05, 2018
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