

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			<p>SA 89/2024 <u>Hon'ble Manoj Kumar Tiwari, J.</u></p> <p>Mr. S.K. Mandal, Advocate, for the appellant.</p> <p>(2) Heard.</p> <p>(3) Learned Counsel for the appellant has relied upon the law declared by Hon'ble Supreme Court in <i>Shafhi Mohammad v. State of Himachal Pradesh</i>, reported as (2018) 2 SCC 801,. Para 29 and 30 of the said judgment are reproduced below:</p> <p><i>"29. The applicability of procedural requirement under Section 65-B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in the absence of certificate under Section 65-B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65-B(4) is not always mandatory.</i></p> <p><i>30. Accordingly, we clarify the legal</i></p>

position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65-B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by the court wherever interest of justice so justifies."

(4) Learned Counsel for the appellant submits that by ignoring the said law, the suit and first appeal filed by the appellant have been dismissed only on the ground that the appellant did not produce the certificate under Section 65-B of the Evidence Act.

(5) Admit the appeal on the substantial question of law no. (I) and (II), set out in the memo of appeal.

(6) Issue notice to the respondents returnable within four weeks. Steps be taken by 2.8.2024.

(7) Summon the trial court record.

(8) List on 27.9.2024.

(Manoj Kumar Tiwari, J.)

29.7.2024

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