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MP-5972-2023

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&amp;

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 26<sup>th</sup> OF FEBRUARY, 2026MISC. PETITION No. 5972 of 2023*SAI DUTT INFRA PVT LTD THR SHRI CHIRAG PRAKASH PARMAR**Versus**NATIONAL HIGHWAY AUTHORITY OF INDIA AND OTHERS*

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Appearance:

Shri Shashank Verma, Senior Advocate with Shri Akhilesh Rai,  
Advocate for petitioner.

Ms. Kavita Ahirwar, Advocate for respondents.

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ORDER

*Per. Justice Pradeep Mittal*

By way of present Misc. Petition, the petitioner is challenging the order dated 25.07.2023 passed by 24th District Commercial Court, Jabalpur in RCS No. 231/2019 whereby an application filed under Section application of the Petitioner filed under 65 and 66 of the Indian Evidence Act., 1872 seeking permission to lead secondary Evidence of the documents original of which were not in possession of the of respondent, has been rejected.

2. The brief facts of the petition are that the Petitioner filed an application before the Learned Trial Court under Sections 65 and 66 of the Indian Evidence Act, 1872. It was stated in the application that the examination of the Plaintiff's witness had not yet commenced, and the



original copies of the following documents were not in the possession of the Plaintiff:

- A. Original Board Resolution dated 09.12.2019
- B. Bank Guarantee
- C. Letter of Award dated 14.10.2019
- D. Letter dated 11.11.2019
- E. Letter dated 07.01.2020

3. It was further stated that the original Board Resolution dated 09.12.2019 had been lost by the Plaintiff. The original Bank Guarantee for a sum of Rs. 1,50,00,000/-, which was submitted as security deposit to the Defendants, is in the possession of the Defendants. The Letter of Award dated 14.10.2019 was served upon the Plaintiff via email, and the original copy thereof is in the possession of the Defendants. The original letter dated 11.11.2019, along with the inventory, was also lost by the Plaintiff and is not available. Similarly, the letter dated 07.01.2020 was served upon the Plaintiff via email, and the original copy thereof is in the possession of the Defendants.

4. The Petitioner prayed for permission to produce the aforesaid documents as secondary evidence under Sections 65 and 66 of the Indian Evidence Act, 1872. In the alternative, the Petitioner prayed that the Defendants be directed to produce the original documents in their possession.

5. The Learned Commercial Court rejected the said application by observing that there was nothing on record to show that the Plaintiff had made any effort to obtain the original documents from the Defendants in



accordance with law, and that no notice to produce the documents had been issued to the Defendants.

Heard the learned counsel for the parties.

To resolve the issue the relevant provision of the Evidence Act is reproduced below,

*"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;"*

The provision under Order 16(6) of the Civil Procedure Code is also relevant which is reproduced below;

*"(6). Summons to produce document. —Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same."*

6. The provisions of Section 65 of the Indian Evidence Act are very clear. Before seeking permission to produce secondary evidence, it must be shown that notice was issued to the person in whose possession the original document is available. Further, where it is alleged that the original document



has been lost or destroyed, the same must be duly proved by placing sufficient material on record. In the present case, no evidence has been produced to establish these facts, and no notice was issued to the Defendants to produce the original documents. Therefore, the Learned Trial Court has rightly rejected the application filed by the Petitioner.

7. Further, the provision for summoning documents is contained in Order XVI Rule 6 of the Code of Civil Procedure, 1908. Therefore, the Petitioner ought to have invoked the provisions of Order XVI of the Code of Civil Procedure to summon the original documents from the Defendants.

8. Further under Section 30(b) of the Civil Procedure Code the court may issue summons to person whose attendance may be required either for the purpose of evidence or for production of documents.

9. In view of the above, no infirmity is found in the impugned order. The application had been filed without compliance of Section 65 of the Evidence Act. It ought to have been filed under the relevant provisions of Civil Procedure Code. The petition being devoid of substance is accordingly dismissed.

(VIVEK RUSIA)  
JUDGE

(PRADEEP MITTAL)  
JUDGE