1.1 The subject matter of Sections 65A and 65B of the Evidence Act is proof of information contained in electronic records. The marginal note to Section 65A indicates that "special provisions" as to evidence relating to electronic records are laid down in this provision. The marginal note to Section 65B then refers to "admissibility of electronic records". Section 65B(1) opens with a non-obstante clause, and makes it clear that any information that is contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document, and shall be admissible in any proceedings without further proof of production of the original, as evidence of the contents of the original or of any facts stated therein of which direct evidence would be admissible. The deeming fiction is for the reason that "document" as defined by Section 3 of the Evidence Act does not include electronic records. Section 65B(2) then refers to the conditions that must be satisfied in respect of a computer output, and states that the test for being included in conditions 65B(2(a)) to 65(2(d)) is that the computer be regularly used to store or process information for purposes of activities regularly carried on in the period in question. The conditions mentioned in sub-sections 2(a) to 2(d) must be satisfied cumulatively. [Paras 20-22][209-A-E]

1.2 Under Sub-section (4), a certificate is to be produced that identifies the electronic record containing the statement and describes the manner in which it is produced, or gives particulars of the device involved in the production of the electronic record to show that the electronic record was produced by a computer, by either a person occupying a responsible official position in relation to the operation of the relevant device; or a person who is in the management of "relevant activities" – whichever is appropriate. What is also of importance is that it shall be sufficient for such matter to be stated to the "best of the knowledge and belief of the person stating it". Here, "doing any of the following things..." must be read as doing all of the following things, it being well settled that the expression "any" can mean "all" given the context. This being the case, the conditions mentioned in sub-section (4) must also be interpreted as being cumulative.
[Para 23][209-E-G; 210-A] Bansilal Agarwalla v. State of Bihar [1962] 1 SCR 33; Om Parkash v. Union of India (2010) 4 SCC 17 : [2010] 2 SCR 447 – relied on.

1.3 The sub-section (1) of Section 65B begins with a non-obstante clause, and then goes on to mention information contained in an electronic record produced by a computer, which is, by a deeming fiction, then made a "document". This deeming fiction only takes effect if the further conditions mentioned in the Section are satisfied in relation to both the information and the computer in question; and if such conditions are met, the "document" shall then be admissible in any proceedings. The words "...without further proof or production of the original..." make it clear that once the deeming fiction is given effect by the fulfilment of the conditions mentioned in the Section, the "deemed document" now becomes admissible in evidence without further proof or production of the original as evidence of any contents of the original, or of any fact stated therein of which direct evidence would be admissible. The non-obstante clause in sub-section (1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65B, which is a special provision in this behalf – Sections 62 to 65 being irrelevant for this purpose. However, Section 65B(1) clearly differentiates between the "original" document – which would be the original "electronic record" contained in the "computer" in which the original information is first stored – and the computer output containing such information, which then may be treated as evidence of the contents of the "original" document. All this necessarily shows that Section 65B differentiates between the original information contained in the "computer" itself and copies made therefrom – the former being primary evidence, and the latter being secondary evidence.
[Paras 30, 31][220-G-H; 221-A-D]

1.4 Despite the law so declared in Anvar P.V., wherein this Court made it clear that the special provisions of Sections 65A and 65B of the Evidence Act are a complete Code in themselves when it

comes to admissibility of evidence of information contained in electronic records, and also that a written certificate under Section 65B(4) is a sine qua non for admissibility of such evidence, a discordant note was soon struck in Tomaso Bruno. The judgment of Anvar P.V. was not referred to at all. In fact, the judgment in State v. Navjot Sandhu (2005) 11 SCC 600 was adverted to, which was a judgment specifically overruled by Anvar P.V. Section 65B(4) was also not at all adverted to by this judgment. Hence, the declaration of law in Tomaso Bruno following Navjot Sandhu that secondary evidence of the contents of a document can also be led under Section 65 of the Evidence Act to make CCTV footage admissible would be in the teeth of Anvar P.V., and cannot be said to be a correct statement of the law. The said view is accordingly overruled. [Paras 34, 35][222-G; 223-A-B; 224-B-C] Tomaso Bruno and Anr. v. State of Uttar Pradesh (2015) 7 SCC 178 : [2015] 1 SCR 721 – overruled.

1.5 Quite apart from the fact that the judgment in Shafhi Mohammad states the law incorrectly and is in the teeth of the judgment in Anvar P.V., following the judgment in Tomaso Bruno which has been held to be per incuriam hereinabove – the underlying reasoning of the difficulty of producing a certificate by a party who is not in possession of an electronic device is also wholly incorrect. As a matter of fact, Section 165 of the Evidence Act empowers a Judge to order production of any document or thing in order to discover or obtain proof of relevant facts. Likewise, under Order XVI of the Civil Procedure Code, 1908 which deals with 'Summoning and Attendance of Witnesses', the Court can issue orders for the production of documents. Similarly, in the Code of Criminal Procedure, 1973, the Judge conducting a criminal trial is empowered to issue the orders for production of documents. Thus, it is clear that the major premise of Shafhi Mohammad that such certificate cannot be secured by persons who are not in possession of an electronic device is wholly incorrect. An application can always be made to a Judge for production of such a certificate from the requisite person under Section 65B(4) in cases in which such person refuses to give it.
[Paras 39-43][228-C-E; 229-B; 230-C; 231-C]

1.6 The facts of the present case show that despite all efforts made by the Respondents, both through the High Court and otherwise, to get the requisite certificate under Section 65B(4) of the Evidence Act from the authorities concerned, yet the authorities concerned wilfully refused, on some pretext or the other, to give such certificate. In a fact-circumstance where the requisite certificate has been applied for from the person or the authority concerned, and the person or authority either refuses to give such certificate, or does not reply to such demand, the party asking for such certificate can apply to the Court for its production under the provisions aforementioned of the Evidence Act, CPC or CrPC. Once such application is made to the Court, and the Court then orders or directs that the requisite certificate be produced by a person to whom it sends a summons to produce such certificate, the party asking for the certificate has done all that he can possibly do to obtain the requisite certificate. Two Latin maxims become important at this stage. The first is lex non cogit ad impossibilia i.e. the law does not demand the impossible, and impotentia excusat legem i.e. when there is a disability that makes it impossible to obey the law, the alleged disobedience of the law is excused. On an application of the aforesaid maxims to the present case, it is clear that though Section 65B(4) is mandatory, yet, on the facts of this case, the Respondents, having done everything possible to obtain the necessary certificate, which was to be given by a third-party over whom the Respondents had no control, must be relieved of the mandatory obligation contained in the said sub-section.
[Paras 45, 49][231-E-H; 236-C-D]
Re: Presidential Poll (1974) 2 SCC 33; Chandra Kishore Jha v. Mahavir Prasad and Ors. (1999) 8 SCC 266 : [1999] 2 Suppl. SCR 754; Special Reference 1 of 2002 (2002) 8 SCC 237 : [2002] 3 Suppl. SCR 366; Raj Kumar Yadav v. Samir Kumar Mahaseth and Ors. (2005) 3 SCC 601 : [2005] 2 SCR 670 – relied on.

2.1 Section 65B does not speak of the stage at which such certificate must be furnished to the Court. In Anvar P.V., this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. This is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the concerned person, the Judge conducting the trial must summon the person/persons referred to in Section 65B(4) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to keep in mind the general principle that the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of the CrPC. The stage of admitting documentary evidence in a criminal trial is the filing of the charge-sheet. When a criminal court summons the accused to stand trial, copies of all documents which are entered in the charge-sheet/final report have to be given to the accused. Section 207 of the CrPC, which reads as follows, is mandatory. Therefore, the electronic evidence, i.e. the computer output, has to be furnished at the latest before the trial begins. In a criminal trial, it is assumed that the investigation is completed and the prosecution has, as such, concretised its case against an accused before commencement of the trial. The prosecution ought not to be allowed to fill up any lacunae during a trial. Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an accused before commencement of the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution under Sections 91 or 311 of the CrPC or Section 165 of the Evidence Act. Depending on the facts of each case, and the Court exercising discretion after seeing that the accused is not prejudiced by want of a fair trial, the Court may in appropriate cases allow the prosecution to produce such certificate at a later point in time. If it is the accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case – discretion to be exercised by the Court in accordance with law. [Paras 50, 52-54][236-D-G; 237-E-F; 238-C, F; 239-A-B]

2.2 So long as the hearing in a trial is not yet over, the requisite certificate can be directed to be produced by the learned Judge at any stage, so that information contained in electronic record form can then be admitted, and relied upon in evidence.

It may also be seen that the person who gives this certificate can be anyone out of several persons who occupy a ‘responsible official position’ in relation to the operation of the relevant device, as also the person who may otherwise be in the ‘management of relevant activities’ spoken of in Sub-section (4) of Section 65B.

Considering that such certificate may also be given long after the electronic record has actually been produced by the computer, Section 65B(4) makes it clear that it is sufficient that such person gives the requisite certificate to the “best of his knowledge and belief” (Obviously, the word “and” between knowledge and belief in Section 65B(4) must be read as “or”, as a person cannot testify to the best of his knowledge and belief at the same time). The certificate required under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V., and incorrectly “clarified” in Shafhi Mohammed. Oral evidence in the place of such certificate cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law. Section 65B(4) of the Evidence Act clearly states that secondary evidence is admissible only if lead in the manner stated and not otherwise. To hold otherwise would render Section 65B(4) otiose. [Paras 57-59][243-B-G]

Taylor v. Taylor (1876) 1 Ch.D 426 – referred to.

3. While on the subject, it is relevant to note that the Department of Telecommunication's license conditions [i.e. under the 'License for Provision of Unified Access Services' framed in 2007, as also the subsequent 'License Agreement for Unified License' and the 'License Agreement for provision of internet service'] generally oblige internet service providers and providers of mobile telephony to preserve and maintain electronic call records and records of logs of internet users for a limited duration of one year. Therefore, if the police or other individuals (interested, or party to any form of litigation) fail to secure those records – or secure the records but fail to secure the certificate – within that period, the production of a post-dated certificate (i.e.one issued after commencement of the trial) would in all probability render the data unverifiable. This places the accused in a perilous position, as, in the event the accused wishes to challenge the genuineness of this certificate by seeking the opinion of the Examiner of Electronic Evidence under Section 45A of the Evidence Act, the electronic record (i.e. the data as to call logs in the computer of the service provider) may be missing. To obviate this, general directions are issued to cellular companies and internet service providers to maintain CDRs and other relevant records for the concerned period (in tune with Section 39 of the Evidence Act) in a segregated and secure manner if a particular CDR or other record is seized during investigation in the said period. Concerned parties can then summon such records at the stage of defence evidence, or in the event such data is required to cross-examine a particular witness. This direction shall be applied, in criminal trials, till appropriate directions are issued under relevant terms of the applicable licenses, or under Section 67C of the Information Technology Act. [Paras 61, 62][244-A-F]

3.1 In the present case, by the impugned judgment dated 24.11.2017, Election Petition 6/2014 and Election Petition 9/2014 have been allowed and partly allowed respectively, the election of the RC being declared to be void under Section 100 of the Representation of the People Act, 1951, inter alia, on the ground that as nomination papers at serial numbers 43 and 44 were not presented by the RC before 3.00 p.m. on 27.09.2014, such nomination papers were improperly accepted. However, by an order dated 08.12.2017, this Court admitted the Election Appeal of the Appellant, and stayed the impugned judgment and order.

This matter has been heard after the five year Legislative Assembly term is over in November 2019. This being the case, ordinarily, it would be unnecessary to decide on the merits of the case, as the term of the Legislative Assembly is over. However, having read the impugned judgment, it is clear that the learned Single Judge was anguished by the fact that the Election Commission authorities behaved in a partisan manner by openly favouring the Appellant. Despite the fact that the reason given of "substantial compliance" with Section 65B(4) in the absence of the requisite certificate being incorrect in law, yet, considering that the Respondent had done everything in his power to obtain the requisite certificate from the appropriate authorities, including directions from the Court to produce the requisite certificate, no such certificate was forthcoming. [Paras 64-66][245-A-G; 246-A-C]

3.2 It is clear that apart from the evidence in the form of electronic record, other evidence was also relied upon to arrive at the same conclusion. The High Court's judgment therefore cannot be faulted. None of the earlier judgments of this Court referred to in Mairembam Prithviraj have been adverted to in Rajendra Kumar Meshram cited by Shri Adsure. In particular, the judgment of three learned Judges of this Court in Vashist Narain Sharma has specifically held that where the person whose nomination has been improperly accepted is the returned candidate himself, it may be readily conceded that the conclusion has to be that the result of the election would be "materially affected", without there being any necessity to plead and prove the same. The judgment in Rajendra Kumar Meshram, not having referred to these earlier judgments of a larger strength binding upon it, cannot be said to have declared the law correctly. As a result thereof, the impugned judgment of the High Court is right in its conclusion on this point also. [Paras 68, 71][247-D; 249-H; 250-A-C]

Rajendra Kumar Meshram v. Vanshmani Prasad Verma (2016) 10 SCC 715 : [2016] 9 SCR 74 – held not correct law.

Mairembam Prithviraj v. Pukhrem Sharatchandra Singh (2017) 2 SCC 487 : [2016] 9 SCR 687; Durai Muthuswami v. N. Nachiappan and Ors. (1973) 2 SCC 45 : [1974] 1 SCR 40 – referred to.

4. The reference is answered by stating that: (a) Anvar P.V., as clarified hereinabove, is the law declared by this Court on Section 65B of the Evidence Act. The judgment in Tomaso Bruno, being per incuriam, does not lay down the law correctly. Also, the judgment in SLP (Crl.) No. 9431 of 2011 reported as Shafhi Mohammad and the judgment dated 03.04.2018 reported as (2018) 5 SCC 311, do not lay down the law correctly and are therefore overruled.

b. The clarification referred to above is that the required certificate under Section 65B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4). The last sentence in Anvar P.V. which reads as "...if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act..." is thus clarified; it is to be read without the words "under Section 62 of the Evidence Act,..." With this clarification, the law stated in paragraph 24 of Anvar P.V. does not need to be revisited.

c. The general directions issued in paragraph 62 shall hereafter be followed by courts that deal with electronic evidence, to ensure their preservation, and production of certificate at the appropriate stage. These directions shall apply in all proceedings, till rules and directions under Section 67C of the Information Technology Act and data retention conditions are formulated for compliance by telecom and internet service providers.

d. Appropriate rules and directions should be framed in exercise of the Information Technology Act, by exercising powers such as in Section 67C, and also framing suitable rules for the retention of data involved in trial of offences, their segregation, rules of chain of custody, stamping and record maintenance, for the entire duration of trials and appeals, and also in regard to preservation of the meta data to avoid corruption. Likewise, appropriate rules for preservation, retrieval and production of electronic record, should be framed as indicated earlier, after considering the report of the Committee constituted by the Chief Justice's Conference in April, 2016. [Para 72][250-C-H; 251-A-C]

A Shafhi Mohammad v. State of Himachal Pradesh (2018) 2 SCC 801; Shafhi Mohammad v. State of Himachal Pradesh (2018) 5 SCC 311 : [2018] 3 SCR 1096; K. Ramajyam v. Inspector of Police (2016) Crl. LJ 1542 – overruled.

B Anvar P.V. v. P.K. Basheer & Ors. (2014) 10 SCC 473 : [2014] 11 SCR 399 – clarified.

Kundan Singh v. State 2015 SCC OnLine Del 13647; Paras Jain v. State of Rajasthan 2015 SCC OnLine Raj 8331 – approved.

Cochin State Power and Light Corporation v. State of Kerala [1965] 3 SCR 187; Raj Kumar Dubey v. Tarapada Dey and Ors. (1987) 4 SCC 398 : [1988] 1 SCR 118; M/s B.P. Khemka Pvt. Ltd. v. Birendra Kumar Bhowmick and Anr. (1987) 2 SCC 401; Hira Tikoo v. U.T., Chandigarh and Ors. (2004) 6 SCC 765 : [2004] 1 Suppl. SCR 65; State of Karnataka v. M.R. Hiremath (2019) 7 SCC 515 : [2019] 8 SCR 713; Vashist Narain Sharma v. Dev Chandra [1955] 1 SCR 509 – relied on.

Vikram Singh and Anr. v. State of Punjab and Anr. (2017) 8 SCC 518 : [2017] 8 SCR 177; State v. Navjot Sandhu (2005) 11 SCC 600 : [2005] 2 Suppl. SCR 79; Tukaram S. Dighole v. Manikrao Shivaji Kokate (2010) 4 SCC 329 : [2010] 2 SCR 396; Central Bureau of Investigation v. R.S. Pai (2002) 5 SCC 82 : [2002] 2 SCR 889; Jagjit Singh v. Dharam Pal Singh (1995) Supp (1) SCC 422 – referred to.

Per V. Ramasubramanian, J. (Supplementing)

1.1 Section 65B(1), Indian Evidence Act, 1872 starts with a non-obstante clause excluding the application of the other provisions and it makes the certification, a precondition for admissibility. While doing so, it does not talk about relevancy. In a way, Sections 65A and 65B, if read together, mix-up both proof and admissibility, but not talk about relevancy. Section 65A refers to the procedure prescribed in Section 65B, for the purpose of proving the contents of electronic records, but Section 65B speaks entirely about the preconditions for admissibility. As a result, Section 65B places admissibility as the first or the outermost check post, capable of turning away even at the border, any electronic evidence, without any enquiry, if the conditions stipulated therein are not fulfilled. The placement by Section 65B, of admissibility as the first or the border check post, coupled with the fact that a number of 'computer systems' (as defined in Section 2(l) of the Information Technology Act, 2000) owned by different individuals, may get involved in the production of an electronic record, with the 'originator' (as defined in Section 2(za) of the Information Technology Act, 2000) being different from the recipients or the sharers, has created lot of acrimony behind Section 65B, which is evident from the judicial opinion swinging like a pendulum. [Paras 10, 11][254-B-E]

1.2 It is a matter of fact and record that courts all over the world were quick to adapt themselves to evidence in analogue form, within the framework of archaic, centuries old rules of evidence. It was not as if evidence in analogue form was incapable of being manipulated. But the courts managed the show well by applying time tested rules for sifting the actual from the manipulated. The felicity with which courts adapted themselves to appreciating evidence in analogue form was primarily due to the fact that in analogue technology, one is able to see and/ or perceive something that is happening. In analogue technology, a wave is recorded or used in its original form. In digital technology, the analogue wave is sampled at some interval and then turned into numbers that are stored in a digital device. Therefore, what are stored, are in terms of numbers and they are, in turn, converted into voltage waves to produce what was stored. Further, Without looking up to the law makers to come up with necessary amendments from time to time, the courts themselves developed certain rules, over a period of time, to test the authenticity of these documents in analogue form and these rules have in fact, worked well. But the facility of operating in anonymity in the cyber space has made electronic records more prone to manipulation and consequently to a greater degree of suspicion. Over a period of time, certain jurisdictions have come up with reasonably good solutions. [Paras 12, 13, 17 and 22][254-F-H; 255-A-B; 257-C;

1.3 Conclusion-

The major jurisdictions of the world have come to terms with the change of times and the development of technology and fine-tuned their legislations. Therefore, it is the need of the hour that there is a relook at Section 65B of the Indian Evidence Act, introduced 20 years ago, by Act 21 of 2000, and which has created a huge judicial turmoil, with the law swinging from one extreme to the other in the past 15 years from Navjot Sandhu to Anvar P.V. to Tomaso Bruno to Sonu to Shafhi Mohammad. [Para 46]

Marking Exhibits in Civil And Criminal Cases and objection Thereon.

The interpretation clause of the Indian evidence act defines the term document. According to Section 3 of the Indian Evidence Act “Document” means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Procedure for taking documentary evidence on record

Procedure for taking documentary evidence on record is provided in Order 13 CPC read with General Rule (Civil).

Order XIII deals with production, impounding and return of documents.

"1. Original documents to be produced at or before the settlement of issues.-(1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with the plaint or written statement.

(2) The court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in sub-rule (1) shall apply to documents--

(a) produced for the cross-examination of the witnesses of the other party; or

(b) handed over to a witness merely to refresh his memory."

Order VII Rule 14 CPC

Order VII Rule 14 CPC in respect of the documents of plaintiff and Order VIII Rule 1A CPC in respect of the documents of defendants.

Order VII Rule 14 CPC

"14. Production of document on which plaintiff sues or relies-(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such documents not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."

Order VIII Rule 1A CPC

Order VIII Rule 1A . Duty of defendant to produce documents upon which relief is claimed or relied upon by him- (1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such document in a list, and shall produce it in court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to documents--

(a) produced for the cross-examination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory."

Obligation upon parties to produce documents

Order XIII Rule 1 CPC now creates an obligation upon parties or their pleader to produce original documents on or before settlement of Issues.

If primary evidence i.e. original document is not available and party intends to lead secondary evidence, then all conditions provided in Evidence Act have to be satisfied.

Order XIII Rule 3 CPC permits a Court to reject a document at any stage of the suit which it considers irrelevant or otherwise inadmissible after recording grounds of such rejection.

Order XIII Rule 4 CPC contemplates endorsement on the documents admitted in evidence and it has to be done by Court since such endorsement has to be signed or initialled by Presiding Officer of the Court.

Order XIII Rule 4 CPC

"4. Endorsements on documents admitted in evidence- (1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the Suit the following particulars, namely:--

(a) the number and title of the suit,

(b) the name of the person producing the document,

(c) the date on which it was produced, and

(d) a statement of its having been so admitted; and the endorsement shall be signed or Initialed by the judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialed by the Judge."

Endorsement on copies of admitted entries

Order XIII Rule 5 CPC provides for endorsement on copies of admitted entries in books, accounts and records. Rule 6 talks of endorsement of documents rejected as inadmissible.

Order XIII Rule 5 CPC

"5. Endorsements on copies of admitted entries in books, accounts and records.- (1) Save in so far as otherwise provided by the Bankers' Books Evidence Act, 1891 (XVIII of 1891), where a document admitted in evidence in the suit is an entry in a letter book or a shop book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the court may require a copy of the entry to be furnished--

(a) where the record, book or account is produced on behalf of a party, then by that party, or

(b) Where the record, book or account is produced in obedience to an Order of the court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which its occurs to be returned to the person producing it.

Endorsement of documents rejected as inadmissible

Order XIII Rule 6 CPC

6. Endorsements on documents rejected as inadmissible in evidence.- Where a document relied on as evidence by either party is considered by the court to be inadmissible in evidence, there shall be endorsed there or the particulars mentioned in clauses (a), (b) and (c) of Rule 4, sub-rule (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

Documents which are admitted in evidence shall form part of record of suit not admitted in evidence shall be returned to the persons producing them.

Order XIII Rule 7 CPC provides that documents which are admitted in evidence shall form part of record of suit. The documents not admitted in evidence shall not form part of record and shall be returned to the persons respectively producing them.

Order XIII Rule 7 CPC

7. Recording of admitted and return of rejected documents.- (1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

(2) Documents not admitted in evidence shall not from part of the record and shall be returned to the persons respectively producing them.

Impound a document and return of admitted documents

Order XIII Rule 8 CPC empowers Court to impound a document and keep in the custody of officer of Court, if it sees sufficient cause, for such period and subject to such conditions, as Court thinks fit.

Order XIII Rule 9 CPC provides for return of admitted documents after suit is disposed of, and, either time for filing appeal has expired or appeal has been disposed of. Proviso covers a situation where a document may be returned at any time earlier than the period provided hereinabove in certain conditions.

Order XIII Rule 10 CPC states that Court may, of its own motion, and its discretion, upon application of any of the parties to suit, send for, either from its own record or from any other Court, record of any other suit or proceeding, and inspect the same. Conditions applicable when such order is passed on the application, are contained in sub-rule 2 of Rule 10. Sub-rule 3 declares that Rule 10 shall not enable Court to use in evidence, any document which under the law of evidence would be inadmissible in suit.

Order XIII Rule 11 CPC extends provisions relating to documents to all other material objects producible as evidence.

The journey of a document : three stages before it is held as proved or not proved or disproved

The journey of a document in civil cases passes through three stages before it is held as proved or not proved or disproved. They are:

1. Production of documents in court (In civil cases along with plaint Order 7 Rule 14 or written statement Order 8 Rule 1A or subsequently at the time of evidence , produced for the cross-examination of the witnesses , handed over to a witness merely to refresh his memory),

2. Admission and exhibition (When it is tendered or produced in Evidence and once admitted by court it becomes part of judicial record), and

3. Proof (or truth of contents) (At the final stage, preferably in Judgement)

What is marking of Exhibits

The courts have evolved the practice of marking of exhibits while recording evidence, as a matter of convenience and for ease of identification. The expression "exhibit" is not defined in the Code of Civil Procedure, 1908. The Code of Civil Procedure, 1908, contemplates admission and rejection of documents in evidence and the due endorsements to be made thereon by the court.

The Hon'ble High Court of Delhi in Sudir Engg. Co. v. Nitco Roadways Ltd, 1995 SCC OnLine Del 251. has elucidated this practice of marking of exhibits as follows:

" The marking of a document as an exhibit, be it in any manner whatsoever either by use of alphabets or by use of numbers, is only for the purpose of identification. While reading the record the parties and the court should be able to know which was the document before the witness when it was deposing. Absence of putting an endorsement for the purpose of identification no sooner a document is placed before a witness would cause serious confusion as one would be left simply guessing or wondering which was the document to which the witness was referring to which deposing. Endorsement of an exhibit number on a document has no relation with its proof. Neither the marking of an exhibit number can be postponed till the document has been held proved, nor the document can be held to have been proved merely because it has been marked as an exhibit."

General Rule (Civil), 1957

The Hon'ble Allahabad High Court in exercise of supervisory powers under Article 227 of Constitution of India read with Section 122 CPC, General Rule (Civil), 1957 have been notified in supersession of all existing Rules on the subject. These Rules have 28 Chapters dealing with different aspects of procedure to be followed, not only in trial of civil suits etc., but also tell subordinate Courts, manner of maintenance of record of various proceedings and other administrative aspects.

Chapter III Part C General Rule (Civil), 1957 , which deals with documents and contains Rules 40 to 69.

Continued

Rule 40 of GR (C), 1957 specify the persons who may produce documents in the Court and says that it may be by parties, by persons, other than parties and on requisition issued by Court. Rule 41 imposes an obligation where the documents produced by party or his witness is in a language other than Hindi, Urdu or English and says that it shall be accompanied by a correct translation of the document in Hindi, written in Devnagri script. Such translation shall bear a certificate of party's lawyer to the effect that the translation is correct. If parties are not represented by a lawyer, Court shall have the translation certificate of any person appointed by it in this behalf at the cost of the party concerned.

Continued

Rule 42 of GR (C), 1957 contemplates that parties desiring to produce any document in Court, shall, before producing it in any Court, obtain admission or denial, recorded on back of the document by the opposite party's lawyer. If opposite party is not represented by lawyer, Court shall get admission or denial by the party in its presence and may, for the purpose, examine the party.

Rule 43 lays procedure of list of documents contemplated in Order VII Rule 14 and Order XIII Rule 1A CPC and says that such list of documents shall be in form (part IV-71). It further says that no document whensoever produced, shall be received unless accompanied by the said form duly filled up. In case a document is produced by a witness or person summoned to produce documents, form shall be supplied by the parties at whose instance the document is produced. It also requires that list as well as the documents shall be immediately entered in the general index.

If there is any erasures or additions in the documents, other than a registered documents or certified copy, Rule 44 of GR (C), 1957 states that such document shall be accompanied by a statement clearly describing such erasure, addition or interlineation and signed by such party. Reference to such statement shall be made in the list form (part IV-71) with which paper is filed.

Continued.....

Rule 45 is basically a provision for safety and convenience of perusal of documents when it is a small piece of paper or of historic value or written on both sides. It reads as under:-

"45. Small documents and documents of historic value.--Small documents when filed in Court shall be filed pasted on a paper equal to the size of the record, and the margin of the paper should be stitched to the file so that no part of the document is concealed by the stitching. If a document contains writing both on the front and the back, it should be kept in a separate cover, which should be stitched to the file at the proper place leaving the main document untouched."

When a party require production of a public record, Rule 46 says that application shall be submitted by such party accompanied by an affidavit showing how such party requiring record has satisfied itself that it is material to the suit and why a certified copy of document cannot be produced or will not serve the purpose.

When a public record is ordered to be produced but its production require sanction of Head of Department, Rule 47 deals with such a situation and says as under:-

Continued.....

"47. Documents for production of which sanction of head of department is necessary.-- When a Court decides that in the interests of justice it is necessary that it should have before it a document which cannot be produced without the sanction of the head of the department concerned, it shall in its order asking for such document set out as clearly as possible (a) the facts, for the proof of which the production of the document is sought; (b) the exact portion or portions of the document required as evidence of the facts sought to be proved. The Court summoning the document shall fix a date for its production, which should not be less than three weeks from the date of issue of summons."

Rule 48 deals with public record of different offices like Sub Registrar, Police, Municipal and District Board and Post Office and says as under:-

"48. Registers from Sub-Registrar's office.--(1) A summons for the production of any register or book belonging to the office of a Sub- Registrar shall be addressed to the District Registrar and not direct to the Sub-Registrar.

Continued.....

(2) Production of documents in police custody.-A summons for the production of documents in the custody of the police should be addressed to the Superintendent of Police concerned, and not to the Inspector General.

(3) Production of Municipal and District Board Records.-When duly authenticated and certified copies of documents in the possession of Municipal and District Boards15 are admissible in evidence, the Court shall not send for original records unless, after perusal of copies filed, the Court is satisfied that the production of the original is absolutely necessary.

(4) Post Office records not to be unnecessarily disclosed.-When any journal or other record of a post office is produced in Court, the Court shall not permit any portion of such journal or record to be disclosed, other than the portion or portions which seem to the Court necessary for the determination of the case then before it."

Continued .....

For summoning of settlement record, procedure is prescribed in Rule 49 and reads as under:-

"49. Settlement Records.--When a Court requires the production of any Settlement Record in which the Settlement Officer acted in a judicial capacity, it shall be summoned in the manner provided by Order XIII, Rule10. In other cases the procedure prescribed in Order XVI, Rule 6 shall be followed. The summons to produce such documents shall be issued to the Collector/Deputy Commissioner, who may send the document by messenger or registered post."

Continued .....

Rule 52 which says that all document received must be received by the Court and must be dealt with in one or the other of three means i.e.

(a) returned;

(b) placed on record; and

(c) impounded.

Rule 53 imposes a duty upon Court to inspect documents as soon as they are produced before Court. It says that documents which are proved or admitted by party against whom they are produced in evidence, shall be marked as exhibit in the manner prescribed in Rule 57 and this fact shall be noted in the record. The document which are not proved or not admitted by parties against whom they are produced in Court, shall be kept in record pending proof and shall be rejected at the close of evidence, if not proved or admitted. Documents that are found to be irrelevant or otherwise inadmissible in evidence shall be rejected forthwith. There is a note under Rule 53 stating that no document unless admitted in evidence shall be marked as an exhibit.

Continued .....

Rule 54 of GR (C), 1957 clarifies that admission of genuineness is not to be confused with admission of truth of contents and reads as under:

"54. Admission of genuineness not to be confused with admission of truth of contents.-(1)When a certified copy of any private document is produced in Court, inquiry shall be made from the opposite party whether he admits that it is a true and correct copy of the document which he also admits, or whether it is a true and correct copy of the document which he denies, or whether it is a true and correct copy of the document the genuineness of which he admits without admitting the truth of its contents, or whether he denies the correctness of the copy as well as of the document itself. Admission of the genuineness of a document is not to be confused with the admission of the truth of its contents or with the admission that such document is relevant or sufficient to prove any alleged fact.

(Proof must be by persons who can vouchsafe for the truth : Narbada Devi Gupta v. Birendra Kumar Jaiswal (2003)-8 SCC 745 held:

"Reliance is heavily placed on behalf of the appellant on Ramji Dayawala Vs. Invest Import: AIR 1981 SC 2085. The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the "evidence of those persons who can vouchsafe for the truth of the facts in issue".

If 'truth' is in issue, or in dispute, marking without objection by itself does not absolve the duty to prove the truth as to the contents of the documents. (Ramji Dayawala Vs. Invest Import, AIR 1981 SC 2085;

Contineud .....

The expression which are to be used by parties while admitting or not admitting documents, is provided in Rule 55 and reads as under:

"55. Proper expression about admissions of documents.-Admission of a document by a party shall be indicated by the endorsement "Admitted by the plaintiff" or "Admitted by the defendant". Admission of a document in evidence by the Court shall be indicated by the endorsement "Admitted in evidence". If any question is raised as to the correctness of a copy and the correctness of its is admitted, the endorsement shall be "correctness of copy admitted". The use of the expression "Admitted as a copy" in endorsement on document is prohibited."

Contineud .....

Rule 56 talks of documents filed in suits which are compromised or dismissed in default and says:

"56. Endorsement on documents in suits compromised or dismissed for default.-Documents filed in suits, which are dismissed for default or compromised, shall, before being dealt with in the manner provided in Rules 59 and 60 be endorsed with the particulars mentioned in Order XIII, Rule 4(i)and the result of the suit."

Rule 57 provides the manner in which marking is to be made in documents and reads as under :

"57. Marking of documents.-(1) Documents produced by a plaintiff and duly admitted in evidence shall be marked with a number, and documents produced by a defendant shall be marked with a number and the letter A, or, where there are more than one set of defendants by the letter A for the first set of defendants, by the letter B for the second, and so on. Where a document is produced by order of the Court and is not produced by any party, the serial number shall be prefaced by the words "Court Exhibit" or an abbreviation of the same.

(2) Where a document is produced by a witness at the instance of a party, the number of the witness shall be endorsed thereon, e.g., Ex.P.W.1 if it is produced by the plaintiff's first witness, and Ex.-A/D.W.1 if it is produced by the defendant's first witness.

Count.

- **Documents produced by a plaintiff – EX-1 , EX-2 (प्रदर्श 1, प्रदर्श 2 आदि)**
- **Documents produced by a defendant EX.- A1 , EX-A (प्रदर्श क 1, प्रदर्श क 2 आदि)**
- **Where there are more than one set of defendants**
- **by the letter A for the first set of defendants, EX.- A1 , EX-A (प्रदर्श क 1, प्रदर्श क 2 आदि)**
- **by the letter B for the second set of defendants, EX.- B1 , EX-B (प्रदर्श ख 1, प्रदर्श ख 2 आदि)**
- **and so on.**
- **Where a document is produced by order of the Court and is not produced by any party, the serial number shall be prefaced by the words "Court Exhibit" or an abbreviation of the same.**
-
- **(2) Where a document is produced by a witness at the instance of a party, the number of the witness shall be endorsed thereon, e.g., Ex.P.W.1 if it is produced by the plaintiff's first witness, and Ex.-A/D.W.1 if it is produced by the defendant's first witness.**

Contineud .....

(3) The party at whose instance a document is produced by a witness shall deposit the cost of the preparation of a certified copy of that document before it is placed on the record. The office shall then prepare a certified copy and keep it with the original document. If the witness wants to take back his document it shall be returned to him unless there are special reasons for keeping the original on the record.

Provided that a certified copy shall not be necessary where the document is written in a language other than Hindi or English, and a translation has been filed as prescribed by Rule 41.

(4) Every exhibit-mark shall be initialed and dated by the Judge."

Contineud .....

If a number of documents of same nature are admitted than the manner in which such documents are marked, is provided in Rule 58 as under:

"58. Marking of documents.- Where a number of documents of the same nature are admitted, as for example, a series of receipt for rent, the whole series should bear one figure or capital letter or letters, a small figure or letter in brackets being added to distinguish each paper of the series."

59. Rule 59 states that documents which are rejected as irrelevant or otherwise inadmissible under Order 13 Rule 3 CPC or not proved, unless impounded under Order 13 Rule 8 or rendered wholly void or useless by force of decree, be returned to the person producing it or to the pleader and such person or pleader shall give a receipt for same in column 4 of list (Form Part IV-71).

Contineud .....

Rules 60 and 61 of GR (C), 1957 deal with retention of impounded and certain other documents and care of impounded documents. Rule 63 talks with the manner in which documents are to be returned. Rule 64 specifically concerned with books of business and read as under:

"64. Books of business.-If a document be an entry in a letter book, a shop book, or other account in current use or an entry in a public record, produced from a public office or by a public officer, a copy of the entry, certified in the manner required by law, shall be substituted on the record before the book, account or record is returned, and the necessary endorsement should be made thereon, as required by Order XIII, Rule 5."

Rules dealing with procedure should be strictly followed.

Evidence is the foundation of every case since in our system of justice disputes are decided, whether Civil or Criminal, on the basis of evidence which may be oral or documentary or both. Therefore, rules dealing with procedure as to how a document will become an evidence is of great importance and such procedure must be adhered. Normal requirement under Rules is that provisions relating to endorsement of document admitted in evidence should be strictly followed.

Objections on documents tendered in evidence

At the stage of evidence when documents are tendered in evidence, the opposing party has the right to object to the document being admitted in evidence and marked as an exhibit.

Objections are basically of three types:

(a) Objection to the document purely on ground of absence/insufficiency of stamp duty.

(b) Where the document is by itself admissible in evidence, but the objection is directed towards the mode of proof alleging the same to be irregular or insufficient

(c) Objection that the document sought to be produced in evidence is ab initio inadmissible in evidence in terms of a relevant statutory provision, for, instance under the provisions of the Registration Act, 1908 , the Transfer of Property Act, 1882", etc.

Contineued.....

In the first case, the court before which the objection is raised questioning admissibility of the document on the ground that it is not duly stamped, has to judicially determine the issue as soon as the document is tendered in evidence and before it is marked as an exhibit. A Bench of four Judges of the Supreme Court had the occasion to consider the question in Javer Chand v. Pukhraj Surana AIR 1961 SC 1655. . The Court held as follows:

4. With reference to the provisions of Section 36 of the Stamp Act, the High Court held that the plaintiffs could not take advantage of the provisions of that section because, in its opinion, the admission of the two hundis "was a pure mistake". Relying upon a previous decision of the Rajasthan High Court in Ratanial v. Daudas 1953 SCC OnLine Raj 23., the High Court held that as the admission of the documents was pure mistake, the High Court, on appeal, could go behind the orders of the trial court and correct the mistake made by that court. In our opinion, the High Court misdirected itself, in its view of the provisions of Section 36 of the Stamp Act. Section 36 is in these terms:

Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61 , be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

Contineued.....

That section is categorical in its terms that when a document has once been admitted in evidence, such admission cannot be called in question at any stage of the suit or the proceeding on the ground that the instrument had not been duly stamped The only exception recognised by the section is the class of cases contemplated by Section 61, which is not material to the present controversy. Section 36 does not admit of other exceptions. Where a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped, it has to be decided then and there when the document is tendered in evidence. Once the court, rightly or wrongly, decides to admit the document in evidence. so far as the parties are concerned, the matter is closed. Section 35 is in the nature of a penal provision and has far-reaching effects. Parties to litigation, where such a controversy is raised, have to be circumspect and the party challenging the admissibility of the document has to be alert to. see that the document is not admitted in evidence by the court. The court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. The record, in this case, discloses the fact that the hundis were marked as Exts. P-1 and P-2 and bore the endorsement "admitted in evidence" under the signature of the court. It is not, therefore, one of those cases where a document has been inadvertently admitted, without the court applying its mind to the question of its admissibility. Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, Section 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial court itself or to a court of appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same court or a court of superior jurisdiction.

Contineued.....

In the second case*, the objection should be taken when the document is tendered and before it is admitted in evidence and exhibited.* Failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of the document, which is sought to be produced, the document by itself being otherwise admissible in evidence. Once the document is admitted in evidence and is used in cross-examination, the document gets proved and can be read in evidence.

Contineued.....

In the third case merely because a document has been marked as "an exhibit", an objection to its admissibility is not excluded. It is available to be raised even at later stage of the suit or even in appeal or revision. There is no question of inadmissible documents being read into evidence merely on account of such document being given an exhibit number without any objection being raised by the opposite party or due to lack of judicial appreciation by the Court. For example, in case of unregistered sale deed or gift deed or lease deed requiring registration, the document itself is inadmissible and no evidence of the terms thereof can be given.

An important aspect to be borne in mind is, being let in evidence is different from being used as evidence of a transaction. (Korukonda Chalapathi Rao v. Korukonda Annapurna Sampathkumar 2021 SCC OnLine SC 847)

Case laws

In **R.V.E. Venkatachala Gounder v. Arulmigus, (2003) 8 SCC 752.** the Supreme Court has laid down the following salutary principles which have been followed in a catena of, judgments:

120. The learned counsel for the defendant-respondent has relied on Roman Catholic Mission v. State of Madras AIR 1966 SC 1457. in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently.

The objections as to admissibility of documents in evidence may be classified into two classes:

Continued...

(i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and

(ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. '

Countinued

The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection thoes not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there, and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior court.

Case Law: Bipin Shantilal Panchal

It would not be out of context to refer to another decision of the Supreme Court in Bipin Shantilal Panchal v. State of Gujarat (2001) 3 SCC 1 The Supreme Court while dealing with the issue in the case of an undertrial prisoner, held as follows:

13. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fallout of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or Revisional Court, when the same question is recanvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast, or remoulded to give way for better substitutes which would help acceleration of trial proceedings

Countinued

14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections, the procedure suggested above can be followed.

Countinued

15. The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is recanvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.

16. We, therefore, make the above a procedure to be followed by the trial courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence.

View Concurrent with and divergence with Bipin Panchal Case

The principle laid down in Bipin Panchal led to a divergence of opinions among the Judges of the High Court of Bombay, eventually leading to a reference to the Full Bench in Hemendra Rasiklal Ghia v. Subodh Mody 2008 SCC OnLine Bom 1017.

In Boman P. Irani v. Manilal P. Gala 2003 SCC OnLine Bom 945 , following the decision of the Supreme Court in Bipin Panchal the High Court of Bombay was pleased to hold that the documents in question may be taken on record and marked as exhibits tentatively subject to the objections raised by the defendants for decision at the last stage in the final judgment as a preliminary issue.

In Boman P. Irani v. Manilal P. Gala 2003 SCC OnLine Bom 945 , following the decision of the Supreme Court in Bipin Panchal the High Court of Bombay was pleased to hold that the documents in question may be taken on record and marked as exhibits tentatively subject to the objections raised by the defendants for decision at the last stage in the final judgment as a preliminary issue.

Continued .....

In **Bharat R. Desai v. Naina Mohanlal Bhals**, the High Court of Bombay inter alia held as follows:

6. The Court must proceed to resolve immediately thereupon questions as regards the proof and admissibility of documents. The question of proof and admissibility must be resolved by the Court in order to ensure that the cross-examination and re-examination, if any, then proceeds to take place on the basis of documents which have been held to be proved and which have been admitted in evidence. Deferring the question of proof and admissibility of documents to an uncertain date in the future is neither in the interests of justice nor does it subserve the object of expedition. The Court must therefore at the outset determine the question of proof and admissibility of documents.

The decision in **Bharat R. Desai** was distinguished and a similar view to the decision in Boman Iran, albeit in relation to the evidence recorded by a Commissioner was expressed by another Single Judge of the High Court of Bombay in **ONGC Ltd. v. FPU Tahara**

Contined

While deciding the question referred, the Full Bench in Hemendra Rasiklal Ghia 2008 SCC OnLine Bom 1017 has inter alia held that:

61. Considering the provisions of law, it is not possible to reject a document admitted and exhibited in terms of Rule 4 in exercise of powers under Rule 6 of Order 13 of the Code of Civil Procedure, 1908. The Full Bench has held that a document can be exhibited in evidence only when such a document is admissible in evidence and not otherwise. If an admissible document is exhibited on establishing its proof, then such document cannot be de-exhibited or rejected. This is abundantly clear from the provisions of law contained in Rules 4 and 6 of Order 13 read with Para 524 of the Civil Manual. In fact, provisions of law contained in Rule 4 are to be read with Rule 6 of Order 13 of the Code of Civil Procedure and cannot be considered to be referable to two different stages. The question of exhibiting the document under Rule 4 can arise only if the document is found to be admissible in evidence and in case it is found to be not admissible, the same is to be rejected in terms of Rule 6 of Order 13 read with Para 524 of the Civil Manual. There is no provision enabling the Court to postpone the objection regarding admissibility or proof of document, as such one can safely rule that the question as to admissibility of document should be decided at it arises and should not be reserved until the judgment of the case is given.

Contined

In Hemendra Rasiklal Ghia has inter alia held that the correct procedure for raising objections and marking of documents in evidence is immediately when such objection is raised without postponing the decision thereon till the stage of final judgment.

Lachhmi Narain Singh v. Sarjug Singh Case

In Lachhmi Narain Singh v. Sarjug Singh 2021 SCC OnLine SC 606. , the Supreme Court has reiterated well-settled principles and held as follows:

25. In view of the foregoing discussion, it is clear that plea regarding mode of proof cannot be permitted to be taken at the appellate stage for the first, time, if not raised before the trial court at the appropriate stage. This is to avoid prejudice to the party who produced the certified copy of an original document without protest by the other side. If such an objection was raised before the trial court, then the party concerned could have cured the mode of proof by summoning the original copy of document. But such an opportunity may not be available or possible at a later stage.

Summary

(a) Admission of a document in evidence and giving it an exhibit number is a formal act, which does not dispense with proof of the document.

(b) As a general rule, objections are to be raised and decided at the time when the document is tendered and can neither be raised nor entertained thereafter.

(c) An objection to deficiency or defect of stamp duty has to be raised at the time the document is tendered in evidence and cannot be raised or entertained after the document is already admitted in evidence and exhibited

(d) Similarly, objection as to mode of proof has to be raised before the document is admitted in evidence and exhibited failing which such objection is treated as waived.

(e) As regards a document which is ab initio inadmissible in evidence, notwithstanding that such document is admitted in evidence and given an "exhibit" number, the same would not render it a part of admissible evidence or preclude an objection thereafter. It is the duty of the Court to exclude all inadmissible evidence, even if no objection is taken to its admissibility by the parties (Hemendra R. Ghia). The power of the Court is not fettered or limited to exclude an inadmissible document at a later stage of the same proceedings or even in appeal or revision and the bar of review is not applicable to such judicially inadmissible documents (Hemendra R. Ghia).

Countinued

(f) The power of the Court is not fettered or limited to exclude an inadmissible document at a later stage of the same proceedings or even in appeal or revision and the bar of review is not applicable to such judicially inadmissible documents

(g) Mere cross-examination upon an ab initio inadmissible document would not render it admissible or proved in evidence. Such principle would apply only to a document which is itself admissible in evidence but suffers from the defect of deficiency of stamp duty or if the mode of its proof is irregular [i.e. a document in categories (a) and (b) above]

(h) In civil cases, ordinarily, the issue of admissibility is to be decided at the earliest and cannot be postponed to a later stage as can be done in a criminal trial,

(i) Assuming that it is possible to work out a different procedure as suggested in Bipin S. Panchal, and only by way of exception in a case which requires resolution of complex issues which may arrest the progress of the matter or if the admissibility of such evidence is itself dependent on receipt of further evidence, only then, the decision on admissibility can be deferred to a later stage, and not as a rule.

(j) Postponement of adjudication on the issue of admissibility of a document to an uncertain future date, would thwart the course of cross- examination/re-examination and would neither subserve the interests of justice nor expedition.

Countinued

(k) The mere fact that an ab initio inadmissible document has been marked as an exhibit in evidence and that cross-examination is conducted thereon without any objection from the parties and also overlooked by the Court, the objection can be raised even at the revisional or appellate stage and such evidence is liable to be rejected under Order 13, Code of Civil Procedure, 1908, at any stage.

(l) It is well settled that where evidence has been received without objection in direct contravention of an imperative provision of law, the principle on which unobjected evidence is admitted, be it acquiescence, waiver or estoppel is not available against a positive legislative enactment.

(m) A document which is ab initio inadmissible in evidence as well as the oral evidence led upon its terms are liable to be rejected in terms of Order 13 of the Code of Civil Procedure, 1908 at any stage of the proceedings, original, appellate or revisional.

Criminal Cases . Rule 27 G.R. Criminal

Marking of Exhibits General Rule Criminal Rule 27

27. Marking of Exhibits.

(a) Every document, weapon or other article admitted in evidence before a court shall be clearly marked with the number it bears in the general index of the case and the number and other particulars of the case and of the police statio.

(b)That shall mark the documents admitted in evidence on behalf of the prosecution with the letter क followed by a serial numeral indicating the order in which they are admitted, thus-

Ex. क1, Ex. क 2, Ex. क 3, etc. (प्रदर्श क 1, प्रदर्श क 2 , प्रदर्श क 3 आदि)

and the documents admitted on behalf of the defence with the letter ख followed by a numeral, thus-

Ex. ख 1 , Ex. ख 2 Ex. ख 3 etc- (प्रदर्श ख 1, प्रदर्श ख 2 , प्रदर्श ख 3 आदि)

(c) In the same manner every material exhibits admitted in evidence shall be marked with numerals in serial order, thus Ex. 1 , Ex, 2 , Ex. 3 , etc. (प्रदर्श 1, प्रदर्श 2 प्रदर्श)

Countinued

(d)All exhibit marks on documents and material exhibits shall be initialled by the presiding officer,

(e) No document or material exhibit which has been admitted in evidence and exhibited shall be returned or destroyed until the period for appeal has expired or until the appeal has been disposed of, if an appeal be preferred against the conviction and sentence.

(f) Documents or material exhibits which have not been admitted in evidence should not be made part of the record, but should be returned to the party by whom they were produced.

Marking of Exhibits General Rule Criminal Rule 27

27. Marking of Exhibits.

(a) Every document, weapon or other article admitted in evidence before a court **shall be clearly marked with the number it bears in the general index of the case and the number and other particulars of the case and of the police station.**

(b)The court shall mark the documents admitted in evidence on behalf of the prosecution with the letter क followed by a serial numeral indicating the order in which they are admitted, thus- Ex. क 1, Ex. क 2, Ex. क 3, etc. (प्रदर्श क 1, प्रदर्श क 2 , प्रदर्श क 3 आदि)

and the documents admitted on behalf of the defence with the letter ख followed by a numeral, thus- Ex. ख 1 , Ex. ख 2 Ex. ख 3 etc- (प्रदर्श ख 1, प्रदर्श ख 2 , प्रदर्श ख 3 आदि)

(c) In the same manner every **material exhibits** admitted in evidence shall be marked with numerals in serial order, thus Ex. 1 , Ex, 2 , Ex. 3 , etc. (प्रदर्श 1, प्रदर्श 2 प्रदर्श)

(d)All exhibit marks on documents and material exhibits shall be initialled by the presiding officer,

(e) No document or material exhibit which has been admitted in evidence and exhibited shall be returned or destroyed until the period for appeal has expired or until the appeal has been disposed of, if an appeal be preferred against the conviction and sentence.

(f) Documents or material exhibits which have not been admitted in evidence should not be made part of the record, but should be returned to the party by whom they were produced.

सार संक्षेप

अभियोजन पक्ष की ओर से प्रस्तुत दस्तावेज पर प्रदर्श	प्रदर्श क 1, प्रदर्श क 2, प्रदर्श क 3, आदि	नोट :- जिस गवाह गवाह ने दस्तावेज को साबित किया है , उसका विवरण भी अब लिखा जा रहा है , जैसे प्रदर्श क 1 PW1 या प्रदर्श ख 2 DW1
अभियुक्त की ओर से प्रस्तुत दस्तावेज पर प्रदर्श	प्रदर्श ख 1, प्रदर्श ख 2, प्रदर्श ख 3, आदि	
भौतिक वस्तुओं पर प्रदर्श प्रदर्श 1, प्रदर्श 2 , प्रदर्श 3		

- दस्तावेज के सभी प्रदर्श चिन्ह और वस्तु प्रदर्श पीठासीन अधिकारी के द्वारा हस्ताक्षरित किये जायेंगें , यदि साक्ष्य के समय आद्याक्षर (intial) न हुआ हो और पीठासीन अधिकारी का ट्रांसफर हो गये हों तो वर्तमान पीठासीन अधिकारी के द्वारा उस पर आद्याक्षर किया जायेगा , और हस्ताक्षर करने की तिथि डाली जायेगी ।
- जब को दस्तावेज या भौतिक वस्तु न्यायालय में पेश की गई और प्रदर्श डाला गया तो वह तब तक लौटाई नहीं जायेगी , न नष्ट की जायेगी , जब तक अपील की अवधि समाप्त न हो गई हो , और यदि अपील की गई है तो अपील का समय समाप्त न हो गया हो ।
- दस्तावेज या वस्तु प्रदर्श जो साक्ष्य में ग्रहण न की गई हो , अभिलेख का भाग नहीं बनाया जायेगा ।

राज्य बनाम .....
प्रदर्श क -1 -------/ प्रदर्श ख, 1---------- वस्तु प्रदर्श- 1
PW------/ DW--------- PW/DW
सत्र परीक्षण संख्या/ फौजदारी वाद संख्या------
धारा , ----------
थाना ----------
न्यायालय ----------
पीठासीन अधिकारी के आद्याक्षर (intial)
दिनाँक .....

52. Documents produced how to be dealt with.

All documents produced must be received by the Court and must be dealt with in one or other of the following ways, viz. :-

(a) returned,

(b) placed on the record, or

(c) impounded.

53. Duty of Court upon production of documents.

The Court shall inspect and consider all documents as soon as practicable after they have been produced and deal with them as follows: -

(a) Documents which are proved (or admitted by the party against whom they are produced in evidence) shall be admitted in evidence and marked as exhibits in the manner prescribed in rule 57 and the fact shall be noted in the record.

(b) Documents which are not proved (or admitted by the party against whom they are produced in evidence) shall be kept on the record pending proof and shall be rejected at the close of the evidence, if not proved or admitted.

(c) Documents that are found to be irrelevant or otherwise inadmissible in evidence shall be rejected forthwith.

Note: No document unless admitted in evidence shall be marked as an exhibit.

54.Admission of genuineness not to be confused with admission of truth of contents.

When a certified copy of any private document is produced in Court, inquiry shall be made from the opposite party whether he admits that it is a true and correct copy of the document which he also admits, or whether it is a true and correct copy of the document which he denies, or whether it is a true and correct copy of the document the genuineness of which he admits without admitting the truth of its contents, or whether he denies the correctness of the copy as well as of the document itself.

Admission of the genuineness of a document is not to be confused with the admission of the truth of its contents or with the admission that such document is relevant or sufficient to prove any alleged fact.

55.Proper expression about admissions of documents.

Admission of a document by a party shall be indicated by the endorsement ***Admitted by the plaintiff***‖ or ***Admitted by the defendant***. Admission of a document in evidence by the Court shall be indicated by the endorsement Admitted in evidence‖. If any question is raised as to the correctness of a copy and the correctness of its is admitted, the endorsement shall be ***correctness of copy admitted***. The use of the expression ***Admitted as a copy*** in endorsement on document is prohibited.

56.Endorsement on documents in suits compromised or dismissed for default.

Documents filed in suits, which are dismissed for default or compromised, shall, before being dealt with in the manner provided in rr. 59 and 60 be endorsed with the particulars mentioned in O. XIII, r. 4(i) and the result of the suit.

57. Marking of documents.

(1) Documents produced by a plaintiff and duly admitted in evidence shall be marked with a number, and documents produced by a defendant shall be marked with a number and the letter A, or, where there are more than one set of defendants by the letter A for the first set of defendants, by the letter B for the second, and so on. Where a document is produced by order of the Court and is not produced by any party, the serial number shall be prefaced by the words Court Exhibit‖ or an abbreviation of the same.

(2) Where a document is produced by a witness at the instance of a party, the number of the witness shall be endorsed thereon, e.g., Ex.P.W.1 if it is produced

by the plaintiff‘s first witness, and Ex.-A/D.W.1 if it is produced by the defendant‘s first witness.

(3) The party at whose instance a document is produced by a witness shall deposit the cost of the preparation of a certified copy of that document before it is placed on the record. The office shall then prepare a certified copy and keep it with the original document. If the witness wants to take back his document it shall be returned to him unless there are special reasons for keeping the original on the record.

Provided that a certified copy shall not be necessary where the document is written in a language other than Hindi or English, and a translation has been filed as prescribed by rule 41.

(4) Every exhibit-mark shall be initialed and dated by the Judge.

वादी की ओर से प्रस्तुत दस्तावेज पर प्रदर्श	प्रदर्श 1 , प्रदर्श 2, प्रदर्श 3 आदि
प्रतिवादी की ओर से प्रस्तुत दस्तावेज पर प्रदर्श	प्रदर्श A 1 , प्रदर्श A 2 , प्रदर्श A 3 , आदि यदि एक से अधिक प्रतिवादी है , तो प्रदर्श A 1 , प्रदर्श A 2 , प्रदर्श A 3 , तथा दूसरे सेट प्रतिवादीगण के लिये प्रदर्श B 1 , प्रदर्श B 2 , प्रदर्श B 3 ,
वादी के गवाह की ओर से प्रस्तुत दस्तावेज पर प्रदर्श	प्रदर्श 1 PW1 , प्रदर्श 2,PW1 संबंधित गवाह के अनुसार
प्रतिवादी के गवाह की ओर से प्रस्तुत दस्तावेज पर प्रदर्श	प्रदर्श A 1- PW1, प्रदर्श A 2- PW1 , तथा दूसरे सेट प्रतिवादीगण के लिये प्रदर्श B 1 PW-- , प्रदर्श B 2 PW-- , प्रदर्श B 3 PW--,
न्यायालय के आदेश से प्रस्तुत दस्तावेज पर प्रदर्श	Court Exhibit or (CE) -1 (न्यायालय प्रदर्श 1 , न्यायालय प्रदर्श 2) आदि

58. Marking of documents.

Where a number of documents of the same nature are admitted, as for example, a series of receipt for rent, the whole series should bear one figure or capital letter or letters, a small figure or letter in brackets being added to distinguish each paper of the series.

59. Return of unproved documents.

A document which is rejected as irrelevant or otherwise inadmissible under O. XIII, r. 3, or is not proved shall, unless impounded under O. XIII, r. 8, or rendered wholly void or useless by force of the decree, be returned to the person producing it or to his pleader, and such person or pleader shall give a receipt for the same in column 4 of list (Form Part IV-71).