

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**OMP No. 1084/2025
in Civil Suit No. 33 of 2024
Reserved on: 22.04.2026
Decided on: 01.06.2026
Date of Uploading on Website:
01.06.2026**

Nirmal Malakar

....Applicant/plaintiff

Versus

Larisa Enterprises Pvt. Ltd. & Anr.

...Non-applicants/defendants

Coram

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

Whether approved for reporting?¹ **Yes.**

For the applicant/plaintiff : Mr. B.S. Chauhan, Senior
Advocate with Ms. Aditi Rana,
Advocate.

For the non-applicants/ : Mr. Mohinder Verma, Advocate.
defendants:

Sushil Kukreja, Judge

This order shall dispose of an application filed by the applicant/plaintiff under Section 60, 62 and 63(4) of Bharatiya Sakshya Adhinyam, 2023 (for short "BSA") for secondary evidence relating to documents in original in possession of the defendants. As per the applicant, he has

¹ Whether reporters of Local Papers may be allowed to see the judgment?

filed a Civil Suit for recovery of amount against the defendants. Before filing the suit, the defendants did make part payments on different dates to the plaintiff with respect to construction and repair work carried in the Hotel premises owned by the defendants. The plaintiff submitted sixteen invoices in original to the defendants, out of which, photocopies of ten invoices were filed with the plaint. After going through the said invoices, the defendants made part payments to the plaintiff on different dates and year. The plaintiff realizing the restriction/constraint in proving photocopies of ten invoices in the Court, the plaintiff issued notice dated 04.10.2024 under Order 12, Rule 8 CPC to the defendants through registered post to produce ten invoices in original and E-mail which was duly served upon the defendants. However, the defendants, despite having been duly served with the notice, did not produce those original invoices and original E-mail. The defendants knowing fully well that documents are in their possession in original, i.e. ten invoices and E-mail (Annexure P-6) consciously did not produce all such documents before the Court, hence, an

application, i.e. OMP No. 983 of 2024, under Order 11, Rule 14 CPC came to be filed in this Court, which was allowed vide order dated 27.03.2025 with a direction to defendant No. 2 and Hem Raj to be present in the Court on the next date i.e. on 08.05.2025. The statement of respondent No. 2 was recorded on 27.06.2025 and next date in the case was fixed for 05.08.2025 for examination of Hem Raj. The applicant has given his best efforts by issuing notice to the defendants, however, despite that they failed to produce documents mentioned in the notice. It is therefore prayed that the documents/proforma invoices No. 1 to 4 and invoices No. 6 to 10 may be ordered to be proved by secondary evidence being part of Annexure P-1 filed with the plaint and original electronic document of Annexure P-6 and original of E-mail message dated 01.10.2019 generated by Kapil Thakur, Assistant Manager Finance/HR, Larisa Resort, Shimla regarding Nirmal Malakar invoice sent to accounts Larisa, purchase Larisa and Priya Larisa through their respective E-mails may be ordered to be placed on record for secondary evidence contained in the computer or

requisite certificate under Section 63 (4) of the Act may be ordered to be issued by the competent authority by stepping into the witness box.

2. Reply to the application has been filed, wherein, it has been averred that the present application is wholly misconceived and not maintainable and has been filed merely to fill up material lacunae in the case. The plaintiff has suppressed material facts and has deliberately withheld the originals of the alleged invoices, being his own documents. It has been further averred that the applicant seeks to misuse the provisions of BSA, whereas the settled position of law is that the party relying upon electronic evidence must itself comply with the mandatory requirement of certificate under Section 65-B(4) of the Act. It has also been further averred that issues are yet to be framed and the suit has not been fixed for evidence. Hence, prayer for dismissal of the application has been made.

3. I have heard learned Senior Counsel for the applicants/plaintiff, learned counsel for the non-

applicants/defendants and also gone through the material available on record.

4. The Indian Evidence Act, 1872 which is now replaced by Bhartiya Sakshya Adhinyam, 2023 (hereinafter referred to as BSA) recognizes electronically stored information as secondary evidence. Section 65 (B) of the Indian Evidence Act 1872 which is now replaced by Section 63 BSA provides that any information contained in the form of electronic records shall be admissible as evidence provided the conditions specified in the section are satisfied. This section prescribes the mode for proof of contents of electronic records as secondary evidence. The facility of proof by secondary evidence would apply to any computer output which is deemed as a document. According to this section, when a statement is produced in evidence under this section, it should be accompanied by a certificate which should identify the electronic record containing the statement and describe the manner in which it was produced. Thus, the application of the best evidence rule in relation to electronic records has been modified by the statutory provision in

Section 63 BSA which provides that computer output whether printed or copied shall be admissible without the need to adduce further proof by production of the original document if the conditions mentioned in the Section 63 BSA are satisfied in relation to the information and computer in question. Thus for proof of any electronic evidence, the conditions mentioned in Section 63 BSA are to be duly complied with.

5. The position of law in respect of the requirement of Sec.65B certificate is no longer res integra. In **Anvar P.V. vs. P.K. Basheer & ors., (2014) 10 SCC,473** it has been held that Section 65B of the Indian Evidence Act is a complete code and being a special provision, would prevail over the general provisions of that Act in respect of admissibility of secondary evidence. Hon'ble Supreme Court has held that Indian Evidence Act, 1872 does not contemplate or permit the proof of an electronic record by oral evidence if requirements Under Section 65B of the Evidence Act are not complied with. The court discussed the law relating to admissibility of electronic evidence and held that Sections 63

and 65 of Indian Evidence Act,1872 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B of the Evidence Act. Some of the paragraphs of the said judgment are reproduced as under:

"14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information 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 only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions under Section 65-B(2) of the Evidence Act:

- (i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;*
- (ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;*

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

17. Only if the electronic record is duly produced in terms of Section 65B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be

made to Section 45A - opinion of examiner of electronic evidence.

18. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act are not complied with, as the law now stands in India.

... ..

20. Proof of electronic record is a special provision introduced by the IT Act amending various provisions under the Evidence Act. The very caption of Section 65A of the Evidence Act, read with Sections 59 and 65B is sufficient to hold that the special provisions on evidence relating to electronic record shall be governed by the procedure prescribed under Section 65B of the Evidence Act. That is a complete code in itself. Being a special law, the general law under Sections 63 and 65 has to yield.

... ..

22. The evidence relating to electronic record, as noted herein before, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generaliaspecialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this court in Navjot Sandhu case (supra), does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible."

7. The aforesaid judgment was duly affirmed and clarified in the case of ***Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others***” reported in (2020) 7 ***Supreme Court Cases*** 1 wherein it has been held that certificate required under section 65B (4) of the Evidence Act is a condition precedent to admissibility of evidence by way of electronic record. It has been held as follows:

“26. It is now appropriate to examine the manner in which Section 65B was interpreted by this Court. In Anvar P.V. (supra), a three Judge Bench of this Court, after setting out Sections 65A and 65B of the Evidence Act, held:

“14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information 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 only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original.”

... ..

32. Coming back to Section 65-B of the Evidence Act, sub-section (1) needs to be analysed. The

sub-section 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.

33. 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 65-B, which is a special provision in this behalf — Sections 62 to 65 being irrelevant for this purpose. However, Section 65-B(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 65-B 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.

34. Quite obviously, the requisite certificate in sub-section (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which

the original information is first stored, is owned and/or operated by him. In cases where “the computer”, as defined, happens to be a part of a “computer system” or “computer network” (as defined in the Information Technology Act, 2000) and it becomes impossible to physically bring such network or system to the court, then the only means of proving information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). This being the case, it is necessary to clarify what is contained in the last sentence in para 24 of Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 which reads as “... if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act ...”. This may more appropriately be read without the words “under Section 62 of the Evidence Act,...”. With this minor clarification, the law stated in para 24 of Anvar P.V. does not need to be revisited.

9. The above discussion would make it clear that requirement of certificate u/s Sec. 63 of BSA is not a mere procedural requirement concerning the mode of proof. It is a strict legal requirement which is a precondition for admissibility of secondary evidence of information contained in an electronic record. In the absence of a certificate u/s Sec. 63(4) of BSA, the information contained in an electronic record would not fall within the definition of "document" under Section 2(1)d of that Act and would be inherently inadmissible as evidence. The only exception envisaged to

this proposition is when the electronic record contained in the computer/device on which the original information is first stored, is itself is produced before the Court by the owner thereof who proves that the said computer/device is owned and/or operated by him.

10. In the instant case, admittedly the invoices have been issued by the plaintiff in favour of the defendant No.1 company, whereas, the case of the defendants is that they had never received any such invoices. It has specifically been averred by the applicant-plaintiff in para-2 of the plaint that *'the plaintiff had issued invoices for the works executed on different dates in favour of defendant No.1-company, which were duly received and acknowledged by the project supervisor as per the detail given in the plaint'*. The defendants, in their written statement, have specifically denied the issuance of invoices referred to by the plaintiff in para-2 of the plaint, or having been shared with the defendants prior to the filing of the present suit. In pursuance to the directions of this Court, Priya Thakur, one of the Directors of the defendants-company, appeared and

specifically deposed on oath before this Court that no invoices were issued by the plaintiff to them for the civil construction works carried by him. She also deposed that the invoices mentioned in para-2 of the plaint were neither sent to them by the plaintiff, nor they had received any such invoices. The defendants have denied that data in question has been generated in their computer system. The defendants have also denied that they were ever in the possession of the original invoices or E-mails.

11. The applicant-plaintiff has also produced on record invoices, perusal of which shows that these are computer generated documents and the same have been issued by the plaintiff, namely, Nirmal Malakar, Government Contractor, Lakkur Bazar on his own letter head and have also been signed by him. Since the invoices have admittedly been issued by the plaintiff on his own letter head and the same are his own documents, therefore, it cannot be said by any stretch of imagination that the same have been generated from the computer system of the defendants as such the plaintiff cannot shift his burden and compel the

defendants to furnish certificate under Section 63(4) of BSA. Hence, no direction can be issued to the defendants to furnish necessary certificate with respect to the invoices and email in question, as prayed by the applicant/plaintiff.

12. In the light of the above-said dictums of the Hon'ble Supreme Court, it is manifest that the invoices being secondary evidence of the electronic record, requires certification under Section 63(4) of BSA in order to admit the same in evidence. In other words, without Section 63(4) of BSA certification, there is no question of the invoices being admitted in evidence and relied upon. Hence, in the absence of Section 63(4) certification, prayer made by the applicant/plaintiff for leading secondary evidence is misconceived and cannot be allowed, as the applicant, who is relying upon the proforma invoices No. 1 to 4 and invoices No. 6 to 10, has to comply with the mandatory requirements of Section 63(4) of BSA which is a specific statutory requirement to make a secondary electronic record admissible as evidence.

13. Consequently, the present application, being devoid of any merits deserves dismissal and the same is dismissed accordingly. Though, in the opinion of this Court, the application deserves to be dismissed with costs, however, taking a lenient view, no costs are being imposed at this stage.

**(Sushil Kukreja)
Judge**

1st June, 2026
(raman)