DISTRICT AND SESSIONS COURT, AMRAVATI.

Topic :- Proof of documents by secondary evidence , admissibility and impounding of documents

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. A writing, printing, lithograph, photograph, map, a plan, an inscription on a metal plate or a stone, a plaque, a caricature etc. are documents.

Chapter V of Indian Evidence Act deal with documentary evidence. It further classifies the documentary evidence in primary and secondary evidence. original document must be produced to prove it as provided by sec.64 of Indian Evidence Act. Contents of document can be proved by primary or secondary evidence.

Primary Evidence [Sec.62] :- means the document itself produced for the inspection of the Court.

Explanation 1 :- Where a document is executed in several parts, each part is primary evidence of the document. Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2 :- Where a number of documents are all made by one uniform process, as in the case of painting, lithography or photography,

each is primary evidence of the contents of the rest, but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Secondary evidence [Sec.63] :- means and includes-

[1] certified copies ;
[2] copies made from the original by mechanical processes, and copies compared with such copies;
[3] copies made from or compared with the original;
[4] counterparts of documents as against the parties who did not execute them;
[5] oral accounts of the contents of a document by a person who has seen it.

The correctness of certified copies will be presumed under s 79; but that of other copies will have to be proved. This proof may be afforded by calling a witness who can swear that he has compared the copy tendered in evidence with the original or with what some other person read as the contents of the original and that such is correct. Certified copies of money lenders licences are admissible in evidence.

Types of Secondary Evidence :- There are different types of secondary evidence. There are 17 main types of secondary evidence which are as follow :-

1. Certified copies.
2. Copies prepared by mechanical process.
3. Counter foils.
4. Photographs.
5. Xerox copy.
6. Photostat copy.
7. Carbon copy.
8. Types copy.

9. Tape records.
10. Copies made from or compared with original copy.
11. Counterparts.
12. Oral accounts.
13. Registration copy.
14. Unprobated will.
15. Age certificate.
16. Voters list.
17. Newspaper report.

Mode of proving a document :-

Contents of private documents are proved either by primary or secondary evidence in view of Sections 61 to 66, the *genuineness* is established by adducing evidence as per Sections 67 to 73; and the *truth* of their contents is ordinarily established by means of independent, direct or circumstantial, evidence.

A duly proved document can only be considered at the final hearing of a proceeding. Onus to prove a document is upon the party intending to rely on it. The genuineness or the truthfulness of the contents of a document

are to be proved by the oral evidence and the contents thereof are to be proved either by adducing primary evidence or the secondary evidence. A document is said to be proved if following three criteria are satisfied:-

(a) firstly, the execution of a document, i.e., the handwriting or signature on the document,if any, is proved. (genuineness of a document)
(b) secondly, contents of a document, and
(c) thirdly, truthfulness of the contents of a document.

The Evidence Act distinguishes between 'private document' and 'public document' and above mentioned criteria of proving the document do not

apply to the 'public document' due to the special rules and presumptions provided by law.

(A) Execution :- The process of proving the signature or handwriting in a document goes to the 'genuineness' of the document.2 The party who seeks to prove a particular document must get the handwriting or signature of the author, if any, identified by the author himself under Section 67 of the Act or any third person acquainted with the handwriting in question under Section 47 of the Act or by a person in whose presence the document was signed or executed under Section 67 and 68 of the Act or by an expert witness under Section 45 of the Act. Also, the signatory may himself admit having signed or executed a document, which dispense with the proof thereof vide Section 58 of the Act. Further, the court itself is enabled under Section 73 of the Act to compare the handwriting or the signature in question with the one admitted or proved to the satisfaction of the court. Under certain circumstances enumerated at section 79 to 90-A of the Evidence Act, a court is entitled to presume that the signature on a document and the document itself is genuine. Thus, under Section 79, courts may presume that certified copies are genuine. Proof of a signature or handwriting on document is sometimes referred to as mere 'formal proof of a document' as proof thereof does not automatically result in the proof of the contents of the document.

(B) Contents :- The contents of a document must ordinarily be proved by 'primary evidence'. However, where the party is not able to produce the primary evidence itself due to the reasons enumerated under Section 65 of the Act, the party is at liberty to produce the secondary evidence to prove the

contents of the document. The 'proof of contents' is different from the 'truth of the contents'. The distinction has been brought out in Om Prakash Berlia v. Unit Trust of India, wherein it was held that expression ' contents of a document' under the Evidence Act must mean only 'what the document states and not the truth of what the document states' and that the truth of contents of a document cannot be proved merely by producing the document for the inspection of the court. For example, a letter is produced as having been written by ‘A’ and it contains a statement that in his presence ‘B’ paid an amount of money to ‘C’. If the 'contents' of this letter are proved, then it can be

said that A, in fact wrote this letter. But that does not mean that B actually paid such amount to C. Hence, the 'truthfulness of the contents of a document' are to be specifically proved.

(C) <u>Truthfulness of the Contents</u> :- Section 67 prescribes that truthfulness of the contents has to be proved by the personal knowledge. Ordinarily, the witness who has been called by the party intending to rely on a document, must have personal knowledge of the document. In other words, such witness should be the author of the document.6 This is proof by way of oral evidence as stipulated in Section 59 of Evidence Act. However, in another judgment of Bombay High Court, Bima Tima Dhotre v. Pioneer Chemical Co.7 observed that it was not necessary to call the writer of the document in order to prove the document as documentary evidence would become meaningless if the writer has to be called in every case. Hence, it can be said that truth of the contents of a document must be proved either by the author or by 'the person who knows and understands the contents', that is persons having personal knowledge of a document. This is rule against hearsay. It is necessary to note that, in some

cases, it will not be necessary to call the author or the writer of the document in order to prove the truthfulness of its contents.

Following are some exceptions to the Rule against Hearsay :-

i. When the truth of contents is not material to be proved or is not in fact in issue.

ii. When the witnesses themselves are not available. Such contingency is covered by the Section 32 of the Evidence Act which states that where the author of a document cannot be called as a witness either because he is dead, cannot be found, has become incapable of giving evidence, or his attendance cannot be procured without unreasonable delay, then the author of the document need not be called in order to depose the contents of the document under any of the circumstances enumerated in the section itself.

iii. Public Documents, discussed hereinafter.

iv. Summaries of voluminous documents. Under Section 65(g) of the Evidence Act, if original documents are voluminous then the summary or synopsis thereof can be prepared and admitted in evidence by a person who is not the author of the documents.

Section 58 of the Evidence Act :- postulates that a document which has been admitted or not specifically denied by the opposite party need not be proved. This is merely a rule of prudence and is subject to the satisfaction of the court. Admission of a document vide Section 18 of the Act by opposite party does not by itself dispense the party to prove its truthfulness of the contents. Party may be required to prove same in accordance with the

law. In **Sudhir Engg. v. Nitco Roadways Ltd.** Delhi High Court held that, the mere admission of a document in evidence does not aamounts to its prove. It was held that a document filed by a party goes through three stages before it is

held proved or disproved: Firstly, the stage in which the document is filed in court, Secondly, the stage in which the party tenders or produces the document in evidence and the court admits the document; and Thirdly, the stage in which the court applies its judicial mind and the document is held proved, disproved and not proved. Once, the above mentioned three criteria are fulfilled a document is said to be 'proved' as defined under Sec.3 of the Evidence Act. If not, then document is said to be 'disproved' or 'not proved' as the case may be.

In **Smt. J.Yashoda Vs. Smt. K. Shobha AIR2007SC1721, 2007(3)ALLMR(SC)823** the Hon'ble Apex Court held that "Secondary evidence as a general rule is admissible only in the absence of primary evidence. If the original itself is found to be inadmissible through failure of the party, who files it to prove it to be valid, the same party is not entitled to introduce secondary evidence of its contents. Essentially,secondary evidence is an evidence which may be given in the absence of that better evidence which law requires to be given first, when a proper explanation of its absence is given. The definition in Section 63 is exhaustive as the Section declares that secondary evidence "means and includes" and then follow the five kinds of secondary evidence. The rule which is the most universal, namely that the best evidence the nature of the case will admit shall be produced, decides this objection that rule only means that, so long as the higher or superior evidence is within your possession or may be reached by you, you shall give no inferior proof in relation to it.

In **Ashok Dulichand v. Madahavlal Dube and Anr. [1976]1SCR246** it was held that "After hearing the learned Counsel for the parties, we are of the opinion that the order of the High Court in this respect calls for no interference. According to clause (a) of Section 65 of Indian Evidence Act, Secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in possession or power of the person against whom the document is sought to be proved or of any person out of reach of, or not subject to, the process of the Court of any person legally bound to produce it, and when, after the notice mentioned in Section 66 such person does not produce it. Clauses (b) to (g) of Section 65 specify some other contingencies wherein secondary evidence relating to a document may be given, but we are not concerned with those clauses as it is the common case of the parties that the present case is not covered by those clauses. In order to bring his case within the purview of clause (a) of Section 65, the appellant filed applications on July 4, 1973, before respondent No. 1 was examined as a witness, praying that the said respondent be ordered to produce the original manuscript of which, according to the appellant, he had filed Photostat copy. Prayer was also made by the appellant that in case respondent No. 1 denied that the said manuscript had been written by him, the Photostat copy might be got examined from a handwriting expert. The appellant also filed affidavit in support of his applications. It was however, nowhere stated in the affidavit that the original document of which the

Photostat copy had been filed by the appellant was in the possession of Respondent No. 1. There was also no other material on the record to indicate

the original document was in the possession of respondent No. 1. The appellant further failed to explain as to what were the circumstances under which the Photostat copy was prepared and who was in possession of the original document at the time its photograph was taken. Respondent No. 1 in his affidavit denied being in possession appeared to the High Court to be not above suspicion. In view of all the circumstances, the High Court to be not above suspicion. In view of all the circumstances, the High Court came to the conclusion that no foundation had been laid by the appellant for leading secondary evidence in the shape of the Photostat copy. We find no infirmity in the above order of the High Court as might justify interference by this Court."

Section 65 deals with the proof of the contents of the documents tendered in evidence. In order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document. Secondary evidence of the contents of a document cannot be admitted without non production of the original being first accounted for in such a manner as to bring it within one or other of the cases."

In **H. Siddiqui (Dead) by Lrs. .vs. A. Ramalingam (2011) 4 SCC 240,** it was held that though the said provision permits the parties to

adduce secondary evidence, yet such a course is subject to large number of limitations. In a case where the original documents are not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permissible for the Court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of document is inadmissible,

until the non-production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that alleged copy is in fact a true copy of the original. It has been further held in this case that mere admission of a document in evidence does not amounts to its proof. Therefore, it is the obligation of the Court to decide the question of admissibility of a document in secondary evidence before making endorsement thereon.

1] Where the original is in possession of adversary or out of reach.

[2] When the existence, condition or contents of the original is admitted in writing by the person against whom it has to be proved.

[3] When the original had been lost or destroyed.

[4] When the original is not easily movable. Example bulky documents.

[5] When the original is a public document within the meaning of Section 74 of the Evidence Act.

[6] When the original consist of numerous accounts or other documents.

[7] Where the original is a document of which the evidence Act permits certified copies to be given in evidence.

Thus this Section reads merely with the foundations that has to be laid for the reception of secondary evidence. Unless a case falls within any one of the spheres of Section 65 secondary evidence is not admissible. When the primary evidence is not available then only the secondary evidence is allowed and secondary evidence may be given when the original is in the possession or powers of opposite party or of a person who is out of reach of, or not subject to the process of the court or of any person legally bound to produce it and when such person does not produce it after notice to produce. When the existence

condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representatives in interest the secondary evidence is allowed.

Procedure for recording Evidence before appellate court :-

Either in code of Civil Procedure or Criminal Procedure no specific or separate procedure of recording evidence is given. Therefore, court has to record follow the general procedure for recording of evidence as if it is evidence in trial. So also no separate procedure for proof of document is given to be followed by appellate court. While permitting additional evidence in civil or criminal proceeding, if occasion arises to prove document by Secondary Evidence, then court has to follow the provisions of Section 63 and 65 of the Act in Chapter V of the Act read with provisions in Code of Civil Procedure relating to allowing additional evidence.

In the matter of **The State of Maharashtra ..Vs.. Krishnaawatar Daulatsingh Madan** reported in MANU/MH/0294/2012 Hon'ble Bombay High court held that, *"The truth of the contents of the document, even prima facie, cannot be proved by merely producing the document for the inspection of the Court, what it states can be so established. The writer of a document is required to depose to the truth of its contents. Section 67 of the Act requires the proof of the handwriting or signature upon a document".*

Electronic Records :-

Section 4 of Information Technology Act 2000 related with the legal

recognition of electronic records. If any information or matter is rendered or made available in an electronic form, and accessible so as to the usable for a subsequent reference, shall be deemed to hve satisfied the requirement of the law which provides that information or any other matter shall be in writing or in the typewritten form. **Section 5** related with the legal recognition of digital signatures. **Section 6** related with the use of electronic records and digital signatures in Government and its agencies. **Section 7** related with the retention of electronic records. If any law provides that documents, records or information are required to be retained for any specific period, then, that requirement shall be deemed to have been satisfied if the same is retained in electronic form. The Information Technology Act, 2000 was amended to allow

for admissibility of digital evidence. The electronic record is any probative information stored or transmitted in digital form that a party to a Court case may use at trial. Before accepting digital evidence it is vital that the determination of its relevance veracity and authenticity be ascertained by the Court and to establish if the fact is hearsay or copy is preferred to the original. Digital evidence is information of probative value that is stored or transmitted in binary form.

Section (2) clause (t) of the Information Technology Act 2000 defines the terms electronic records. It means "data, record or data generated, image or sound stored, received or sent in a electronic form micro film or computer generated micro fiche".

Section 61 to 65 Indian Evidence Act, the word "Document or content of documents" have not been replaced by the word "Electronic

documents or content of electronic documents". Thus, the omission of the word, "Electronic Records" in the scheme of Section 61 to 65 signifies the clear and explicit legislative intention, i.e. not to extend the applicability of Section 61 to 65 to the electronic record in view of overriding provision of Section 65-B Indian Evidence Act dealing exclusively with the admissibility of the electronic record which in view of the compelling technological reasons can be admitted only in the manner specified under Section 65-B Indian Evidence Act.

Objectives of special Provisions :-

The main objective to introduce the special provision has its origin to the technical nature of the evidence particularly as the evidence in the electronic form cannot be produced in the court of law owing to the size of computer/server, residing in the machine language and thus, requiring the interpreter to read the same. The Section 65B of the Evidence Act makes the secondary copy in the form of computer output comprising of printout or the data copied on electronic/magnetic media.

Section 65A :- provides that contents of electronic records may be proved in accordence with the provisions of section 65B.

Section 65B :– Admissibility of Electronic Records

Sec. 65B(1) :- Notwithstanding anything contained in this Act, anyinformation 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 also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be

admissible in any proceedings, 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.

Sec. 65B(2) : The computer from which the record is generated was regularly used to store or process information in respect of activity regularly carried on by a person having lawful control over the period, and relates to the period over which the computer was regularly used; Information was fed in computer in the ordinary course of the activities of the person having lawful control over the computer; The computer was operating properly, and if not, was not such as to affect the electronic record or its accuracy; Information reproduced is such as is fed into computer in the ordinary course of activity.

Sec. 65B(4) Certificate : Regarding the person who can issue the certificate and contents of certificate, it provides the certificate doing any of the following things: identifying the electronic record containing the statement and describing the manner in which it was produced; giving the particulars of device dealing with any of the matters to which the conditions mentioned in sub-section (2) relate and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it. **(Yusufali Usmail V State of Maharashtra AIR1968 -147)**

Mode of proving Electronic records :-

For the Admissibility of electronic evidence, it must satisfy the same rules as required for traditional documentary evidence to be admitted into evidence as laid down by Indian Evidence Act. But most of electronic evidence is intangible, invisible so some help/aid from technical person/Knowledge may be required to ascertain the fact which is to be proved. The section 3 for , "Document" and "Proved" reflects that, the principles of Indian Evidence Act are not changed in any way to prove the electronic documents. Being Jorgan (technical Words) in the Information Technology Act , some may feel that, it is difficult law to understand.

How to prove e-mail :- Section 88, 88A, 114(f) of the Evidence Act with section 26 of the General Clause Act are relevant sections for sending and receipt of e-mail and its proof. To admit emails into evidence, the proponent must show the origin and integrity of emails. He must show who or what originated the e-mail and whether the content is complete in the form intended, free from error or fabrication. In discovery, the proponent needs to prove that the hard copy of the email evidence is consistent with the one in the computer and includes all the information held in the electronic document. Next stage follows that, before admissibility the document has to meet the requirements of authentication or identification. This is a process of verification that establishes that the document is what it purports to be. i.e. that the email was made by the

author indicated therein and is unaltered except for the change in the document

generated automatically such as adding the date and time in case of email and address. The burden is on the person adducing the data message to prove its authenticity by adducing relevant evidence therefore that the document is what it purports to be. Where best evidence is the evidence required, the rule of best evidence is fulfilled upon proof of the authenticity of the electronic records system in or by which the data was recorded or stored. In assessing the evidential weight the court shall have regard to the reliability of the manner in which the data message was generated, stored or communicated; the reliability of the manner in which the authenticity of the data message was maintained; the manner in which the originator of the data message or electronic record was identified; and any other relevant factor. The authenticity of the electronic records system such as a computer is presumed in the absence of any evidence to the contrary where there is evidence that the system was operating properly. Where the record is stored by a party adverse to the production of the email or data message; evidence is led that the record was stored in the usual and ordinary course of business by a party who is not a party to the suit. The Act specifically provides that it does not modify the statutory or common law rules for the admissibility of evidence. For admissibility of electronic records, specific criteria have been made in the Indian Evidence Act to satisfy the prime condition of authenticity or reliability which may be strengthened by means of new techniques of security being introduced by advancing

technologies. It also requires: a] Integrity of the data. b] Integrity of the hardware/software c] Security of the system. How to prove that, system was properly working ? To show that the system was working properly, the evidence is necessary to show that, record was stores in the usual and ordinary course of

business by a party (provider) who is not party to the case. If some one challenges the accuracy of the computer evidence or electronic evidence or interpolation then he must prove the same beyond reasonable doubt. Recently in case of **Anvar vs. Bashir (Civil Appeal No. 4226/2012 decided on 18.09.14)** the Hon'ble Supreme Court deliberated upon the procedure for proof of electronic evidence and concluded, *" 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".*

1. **Ark Shipping Co. Ltd. – Vrs- Grt Ship Management Pvt. Ltd reported in 2007(5)ALLMR 516**
2. **State- Vrs-Navjot Sandhu 2005 (11) SCC 600 (certificate under section 65B not necessary).**
3. **State of Delhi – Vrs—Mohd Afzal and others 2003(3) 11 JCC 1669** Commissioner of Customs Mumbai—Vrs—Ridhi Sidhi Furniture Fitting Co.2002 (144) ELT 444

Impounding of document

Chapter IV of the The Bombay Stamp Act deals with "Instruments not duly stamped". The chapter comprises of section 33 to 46. Rule 8 of Order XIII of C.P.C also provides for order by the court for impounding of documents.

Stage at which document can be impounded :-

Insufficiently stamped documents can be impounded when it is produced in evidence. It was held by Hon'ble Bombay high court in ***Hemendra Rasiklal Ghia v/s Subodh Modi reported in 2008(6)MhLJ 886*** that, objection to the document sought to be produced relating to the deficiency of stamp duty must be taken when the document is tendered in evidence and such objection must be judicially determined before it is marked as exhibit.

Relevant Date for Levying penalty :-

While recovering the penalty, the date of execution is relevent. It is provided in sec 34 of Bombay stamp Act the penalty shall be recovered at the rate of 2 percent from the date of execution of the instrument.

It was held by Hon'ble Bombay High Court in ***Krishna Sheena Shetty versus Suresh Anant Sawant & Another reported in 2008 (4) AIR Bom. R. 440*** that, for payment of the stamp duty, the date of execution of the

instrument would be a relevant and penalty shall be laid in accordance with the provision of Section 34 (a) (ii) i.e 2% of the deficient portion of the stamp duty for every month or part thereof, from the date of execution of such instrument.

Procedure for impounding of documents :-

As per Sec.33 of The Bombay Stamp Act provides that if any document is produced in evidence which is not sufficiently stamped in such case the Court may impound that document. Section 33A provides for impounding after registration. As per Sec.34 of Stamp Act such document can be admitted in evidence on payment of chargeable duty. In addition to that it is

necessary to recover 2% penalty of the deficient portion of the stamp duty for every month or part thereof from the date of execution of document. However, it is provided that this penalty shall not exceed double of the deficient portion of the stamp duty.

In ***Shri Jayasingh Narayan Tupe versus Shri Sambhaji Baburao Pawar and others reported in 2013 (3) MhLJ 433***, it has been observed that, if the possession of immovable property is handed over in the document styled as agreement to sell, then it requires requisite stamp as per the Act. Further, if the delivery of possession is to take place on the execution of the sale deed then such an agreement would not be covered by the Explanation I to Article

25. However, the Trial Court thereafter erred in not impounding the document under Section 33 of the Bombay Stamp Act and sending it to the Collector for adjudication but has merely recorded that since the document is improperly stamped, it cannot be read in evidence. To that extent, the impugned order would have to be set aside and is accordingly set aside and the Trial Court is directed to impound the said document and send it to the Collector for adjudication. It is only after the document is adjudicated upon for the payment of stamp duty and in the event the stamp duty is paid, that the Plaintiff can apply to the Trial Court for the document to be read in evidence.

<u>Instrument impounded, how to be dealt with</u> :-

When a document is sought to be tendered in evidence before the Court and if it is found that the document/ instrument is not sufficiently stamped, it is the duty of the Court to impound the said document in

accordance with Section 33 of the said Act. In view of section 34 of the said Act, the said document cannot be admitted in evidence. Proviso makes it clear that if the deficit stamp duty is paid and if penalty as provided therein is paid, the document can be admitted in evidence. Under the said Act, no power is conferred on the Court to determine the stamp duty chargeable in respect of any instrument. In view of Sections 31 and 32 of the said Act, the said power is vested in the Collector. Jurisdiction of the Civil Court is confined to recording a finding on the question whether an instrument is duly stamped. The Civil

Court cannot determine the stamp duty payable on a particular instrument.

If the Civil Court finds that the document which is not duly stamped is sought to be tendered in evidence, the power under section 33 of the said Act will have to be exercised and the document will have to be impounded. After impounding the document, the Court is under an obligation to send a true copy of the said document to the adjudication of the Collector in accordance with sub-section (3) of section 32-A of the said Act. Only after adjudication is made by the Collector, the party relying upon the document will have to pay deficit stamp duty and penalty. After a certificate issued by the Collector regarding compliance with the requirement of payment of deficit stamp duty and penalty, Civil Court can exercise power under proviso (a) to section 34 of the said Act. Thereafter, the document can be admitted in evidence if the same is proved and if it is otherwise admissible in evidence.

Conclusion :- To sum up, the proof of genuineness of a document is dealt in Section 59 read with Sections 67 to 73 of the Evidence Act. So far as

its contents are oncerned, the rules are embodied in Section 61 to 66 of the Evidence Act. In other words, the genuineness or the truthfulness of the contents of a document are to be proved by the oral evidence and the contents thereof are to be proved either by adducing primary evidence or the secondary evidence.

An instrument chargeable to duty, if unstamped or insufficient stamped is required to be impounded first. Unless, it is impounded it cannot be admitted in evidence. Such document cannot be used for any purpose unless impounded and requisite stamp duty is paid. Court is duty bound to impound the document once it notices that it is not duly stamped. Even if earlier application for impounding the document is withdrawn by the concerned party, court shall proceed with the process of impounding. In short, an instrument chargeable to duty, if unstamped or insufficient stamped cannot be used for any purpose unless impounded and requisite stamp duty is paid.

Submitted with due respects by Core Group for Civil Subjects.

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Shri. P.J. Modak
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