

26th OCTOBER, 2021

ISSUE 4

THE PRODUCTION OF DOCUMENTS IN EVIDENCE UNDER THE CODE OF CIVIL PROCEDURE, 1908.

INTRODUCTION

• The Code of Civil Procedure, 1908 (for short “CPC”) lays down the rules formulated for applicability to civil disputes and laws relating to procedure to be followed by the courts of civil judiciary, i.e., civil courts in adjudication of such disputes.

• We refer to various provisions of the CPC that lay down the law as to production of documents in evidence in a civil suit.

• Under the CPC, the Courts have been granted the authority to make necessary or reasonable orders in matters relating to admission, discovery, inspection, production, return, etc. of documents producible as evidence.

Power of the Court to issue Summons for Production of Documents

• Under Section 30(b) of the CPC, the Court may issue summons to persons whose attendance may be required either for the purpose of evidence or for production of documents.

• Such summons may be issued to defendants as well as to the witnesses under Sections 27 and 31 of the CPC respectively.

• Order V Rule VII, CPC similarly provides for issue of summons to order the defendant to produce documents in his possession or power when the defendant has relied on such documents in support of his case.

• Order XVI Rule 15, CPC sets out that it is the duty of the person so summoned to give evidence or produce document at the time and place mentioned in such summons.

• In fact, Rule 7 under Order XVI, CPC grants further power to the court to require any person present in court to produce a document in his possession or power then and there.

• Order XVI, CPC which speaks of summoning and attendance of witnesses, under Rule 6 specifies that any person who has been summoned to merely produce a document without being summoned to give evidence must be deemed to have complied with the order of summons when he

causes the document to be produced without attending personally.

Contents of a document

• Order VI Rule 9 under the CPC provides that the effect of the document that has been relied on must be stated when the contents are material to the case. It shall be sufficient to enumerate the effect of such contents in the pleadings as briefly as possible. It is not mandated to set out the contents of the documents unless necessary.

• In the case of *Sait Tarajee Khimchand vs. Yelamarti Satyam* (1972) 4 SCC 562 held that mere marking of an exhibit does not dispense with the proof of the contents of a document.

• In the same line of reasoning, the Hon’ble Bombay High Court in *Om Prakash Berlia vs. Unit Trust of India* AIR 1983 Bom 1 held that the truth of what the document states must be separately established. Mere admissibility of the document does not prove the contents of the document.

• A division bench of the Hon’ble Supreme Court in *Narbada Devi Gupta vs. Birendra Kumar Jaiswal* (2003) 8 SCC 745 held that mere production and exhibiting of a document shall not be enough and the content of such document shall be proved. However, when the signatory to the document admits to its contents, the requirement of additional evidence as to its proof does not survive.

• The contents of a document in relation to the allegations made by the parties are also material in the framing and settlement of the issues as contemplated under Order XIV Rule 3 of the CPC.

• Thus, the contents of a document must be proved within the terms of Rules of CPC read with section 61 (Proof of contents of documents) of the Indian Evidence Act, 1872

Production of documents

• Production of documents relied on or sued upon by a plaintiff, in support of his claim, lying in his possession or power must be entered in a list of



Neha Maniktala

Associate, MCO Legals

BBA, LLB,
Symbiosis Law School, Noida

Expertise:

Corporate/Commercial Arbitration

✉ neha.m@mcolegals.co.in



Shivangi Pathak

Research Partner

B.A., LLB (Hons),
Calcutta University

documents and shall be presented along with the plaint as provided in Order VII Rule 14(1). Sub-rule (2) under Rule 14 states that in case the document so relied on is not in the possession or power of the plaintiff, he must, if possible, state in whose possession or power it lies.

- Sub-rule (3) further clarifies that when a document is not presented in accordance with sub-rule (1) and (2) as mentioned above, it shall not be accepted in evidence on the behalf of the plaintiff at the hearing of the suit, unless the leave of the court is obtained.

- Rule 1A under Order VIII of the CPC provides for similar provisions for production of documents by the defendant when he relied upon them in relation to his defence or counter-claim in his written statement.

Discovery and Inspection of documents

- Order XI of the CPC deals with the provisions relating to discovery and inspection of documents.

- Order XI, Rule 12 and Rule 15 of the CPC under such Order contemplate that any or both of the parties may effect the discovery and inspection of the documents produced by the other party, on an application for the same being made before the Court.

- The Court may allow such application if it is satisfied as to the importance of the same being justified and the court may reject the application when it is of the opinion that it is either not necessary for the suit being disposed fairly or for saving costs.

- In **M.L. Sethi vs. R.P. Kapur** (1972) 2 SCC 427, the Supreme Court held that when a court makes an order for discovery, the opposite party is bound to produce an affidavit of documents (Order XI Rule 13) which are or have been in his possession or power. After disclosure, the party may be required to produce such documents for inspection, as may be in his possession and are relevant.

- Order XI Rule 14, additionally states that court may lawfully order the production of a document upon oath at any time during the pendency of a suit relating to any matter in question as it thinks right and deal with it in such manner as it thinks fit.

Commissions

- Section 75 to 78 of CPC, recognizes that evidence under this Code may in special circumstances be conducted by a Commission rather than in a Court. The commission, however, is to only act for the purposes of recording evidence on the permission and order of the Court.

- Order XXVI states that a Court may order or issue commission to examine witnesses in any suit when such person being the witness is either exempted under the Code from attending the Court or is unable to attend court due to sickness and infirmity. The proviso to such Rule mentions that a Court may not issue commission for examination of witness unless it thinks it is necessary to do so and the reasons for the same must be recorded. Rule 16 thereunder falling within the purview of general provisions lists the power of commissioners. In addition to other powers, the commissioner may, unless directed otherwise in the order of appointment, call for and examine documents and other things relevant to the subject of inquiry.

- For the purposes of commission, a commissioner shall be deemed to be a civil court and the provisions relating to summoning, attendance and examination of witness shall squarely apply to the witness being examined in commission as provided under Order XXVI Rule 17.

Conclusion

- It is well established that the Code of Civil Procedure is self-contained and provides a fair procedure of adjudication of civil disputes.

- This sufficiently provides that provisions under the CPC may be exhaustive in as far as the production of documents in evidence is concerned and has not been subjected to the scrutiny of the court for filling in the gaps in regard to this subject except for the interpretation of the provisions therein.