

## **EVIDENTIARY VALUE OF BANK RECORDS**

### **ADMISSIBILITY OF BANK RECORDS IN EVIDENCE**

Evidence is the means from which inference may logically be drawn as to the existence of fact. Most commercial disputes varying from breach of contract to a case for specific performance of a contract, breach of fiduciary responsibility and money claims derive their force from financial records of the parties. One of the most accurate way of effectively supporting the claim of a party is by evidencing the same through bank statements / records of the party.

Section 34 of the Indian Evidence Act, 1872 provides that entries in books of account including those maintained in an electronic form regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court or Arbitral Tribunal has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

The Bankers' Books Evidence Act 1891 ("**the Act**") was enacted to regulate the manner of producing evidence in the court and for defining the method of submission of the document procured from the Bank.

### **MODE OF PROOF OF ENTRIES IN BANKERS' BOOKS**

The Act defines certified copy as a copy of any entry in the books of a bank together with certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business, and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.

Subject to other provisions of the Act, a certified copy of any entry in a Banker's book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

As per the Act, the document produced before the court must be certified according to the procedure in section 2(8) and 2(A) of the Act. However, with regards to the compliance of provisions of Section 2(8) and 2A an important question arises as to whether bank records would be admissible in absence of certain standards provided for under the said Sections. The Hon'ble High Court of Bombay in the matter of Radheshyam G. Garg vs. Safiyabai Ibrahim Lightwalla<sup>1</sup> held that the provision recorded for certified copies of bank records are merely directory in nature. While deciding whether certain extracts of statement of account could be treated as certified copy and consequently read in evidence where the said statement of account were not signed by the principal accountant or manager as required and where the same did not bear any date or official seal, the Hon'ble Court clarified that

---

<sup>1</sup> AIR 1988 Bom 361, 1987 (3) BomCR 459 Radheshyam G. Garg vs. Safiyabai Ibrahim Lightwalla

the Courts need not adopt a hyper technical approach. The detailed ingredients mentioned in the defining Clause 8 of Section 2 of the Bankers' Books Evidence Act, 1891 for qualifying to be 'certified copy' are not mandatory but merely directory. Sufficient compliance depending upon facts and circumstances of each case is enough to qualify a document to be 'certified copy'.

The certified nature is required because it establishes the reliability and credibility of the document tendered in evidence before a Court of law. Section 34 of the Indian Evidence Act, Sections 2(8), 2A and 4 of the Banker's Book Evidence Act provide that the prosecution is required to lead admissible evidence to prove the entries in the books of accounts and after having led admissible evidence link the same with other evidence on record to prove the guilt of the accused beyond reasonable doubt. Thus, for the statements of accounts of a bank exhibited on record have to be accompanied by certificate as envisaged under Section 2A of the Act, to be admissible in evidence. But no person can be charged with liability on the basis of mere entries whether the entries produced are the original entries or copies under Section 4 of the Act in absence of evidence in support of the entries to show that the money was advanced as indicated therein and thereafter the entries would be of use as corroborative evidence<sup>2</sup>.

The Hon'ble High Court of Delhi in the matter of Om Prakash vs Central Bureau Of Investigation<sup>3</sup> held that an objection as to the person exhibiting statements of account i.e. an objection to the mode of proof and not admissibility, has to be taken at the time of exhibition of the documents. Therefore if certified copies of the statements of accounts have been exhibited as per the requirement of Section 2A of the Act, the statement of account would be admissible and in case no objection to the witness proving the same is taken at the time when the document is exhibited, the document would be validly read in evidence.

The Reserve Bank of India pursuant to suggestion of a Civil Court by its circular<sup>4</sup> has instructed all banks that any data stored in their computer systems as evidence under the Act, must be accompanied by a certificate prescribed under Section 2A (a) and (b) of the Act. It has also advised that all State and Central Co-operative banks should comply with the provisions of the Act while furnishing certified copies and computer printouts to courts and in the absence of such statutory certificate, the court would not be obliged to admit the document in evidence without any further proof.

## **ADMISSIBILITY OF ELECTRONIC BANK RECORDS**

Electronic Evidence is fundamentally computer-generated probative information stored or transmitted in digital form that is relevant to a case.

---

<sup>2</sup> (1967) 1 SCR 898 *Chandradhar Goswami & Ors. Vs. Gauhati Bank Limited*

<sup>3</sup> CRL.A. 134/2016 *Om Prakash Vs. Central Bureau of Investigation (CBI)*

<sup>4</sup> *Submission of Certified Copies of Entries / Print out to Courts (RBI/2008-09/457) dated 24<sup>th</sup> April 2009*

Documentary evidence in electronic form under the India Evidence Act 1872, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B which deals with the admissibility of the electronic record. Section 65B of the Indian Evidence Act is *pari materia* to Section 2A of the Act<sup>5</sup> as both relate to laws on the same matter and therefore must be construed with reference to each other. Further, owing to the principle of *Generalia Specialibus non derogant* which connotes that a special law will always prevail over the general law, Section 2A of the Act will prevail over Section 65B of the Evidence Act in cases of bank records maintained in electronic form.

## APPLICATION FOR INSPECTION OF BANK RECORDS

The Act further provides that an officer of a bank shall not be compelled to produce any bankers book the contents of which can be proved under this Act or to appear as a witness to prove the matters, transactions and accounts, in any legal proceeding to which the bank is not a party, unless by order of the Court or a Judge made for special cause. Consequently, the Act also provides that a party to a legal proceeding is at liberty to make an application to the Court for the purpose of taking inspection and taking copies of any entries in a banker's book.

## CONCLUSION

The Act aims to ensure accuracy by providing for a certification method to be complied with. Subject to other provisions of this Act, a certified copy of any entry in a bankers' books shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and therefore it is essential that the certification process provided for under the Act is followed to the greatest possible extent.

***Spardha Sharma***

***Associate, Solomon & Co.***

---

### ***About Solomon & Co.***

Solomon & Co. (Advocates & Solicitors) was founded in 1909 and is amongst India's oldest law-firms. The Firm is a full-service firm that provides legal service to Indian and international companies and high net-worth individuals on all aspects of Indian law.

### ***"Disclaimer"***

The information contained in this article is intended solely to provide general guidance on matters of interest for the personal use of the reader, who accepts full responsibility for its use. The application and impact of laws can vary widely based on the specific facts involved. As such, it should not be used as a substitute for consultation with a competent adviser. Before making any decision or

---

<sup>5</sup> *Om Prakash Supra*

taking any action, the reader should always consult a professional adviser relating to the relevant article posting.

---

*Copyright © 2020 Solomon & Co., All rights reserved.*