

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 1250 of 2012 (O&M)
Date of Decision: 08.5.2015.**

Vinay Sood

.....Petitioner

Versus

Vijay Sood and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Ms. Monika Jalota, Advocate
for the petitioner.

Mr. P.K.Dutt, Advocate
for respondents No. 1 and 2.

SABINA, J.

Petitioner has filed this petition under Article 227 of the Constitution of India challenging the order dated 4.2.2012 (Annexure P-5) whereby applications moved by respondent No. 1 to prove dissolution deed dated 30.6.2003 and balance sheet for the year 2001-2002 by way of secondary evidence, were allowed.

Learned counsel for the petitioner has submitted that the applications were liable to be dismissed as there was no occasion for the execution of the dissolution deed in the absence of any partnership firm. Further, the plaintiff had failed to establish the loss of the original documents. In support of her arguments, learned counsel for the petitioner has placed reliance on '**Mangat**

Ram versus Prabhu Dayal and others, 2002(2) Civil Court

Cases 0381', wherein it was held as under:-

“A perusal of the order passed by the Civil Judge shows that primary reason for rejecting application as that defendant/petitioner failed to prove that how he arranged photo copies of the original documents. The view of the Civil Judge extracted in para above appears to be that once the documents are lost or destroyed then the defendant/petitioner must show how its photocopies have been procured. It is not a case where the documents were required to be kept in duplicate or in triplicate. Having failed to prove as to how he arranged the photocopies of the original documents, the application was dismissed. Even at the time of hearing, learned counsel was not able to explain this aspect. ”

Learned counsel for respondents No. 1 and 2, on the other hand, has opposed the petition and has submitted that the applications filed by the said respondents had been allowed subject to proof of loss of original documents as well as balance sheet and other just exceptions. After the passing of the impugned order, respondents No. 1 and 2 have already led the secondary evidence in order to prove the documents in question. In support of his arguments, learned counsel has placed reliance on **Ashok Kumar Sachdeva versus Harish Malik 2007(4) PLR 164'**, wherein it was held as under:-

“After hearing learned Counsel for the parties, I am of the view that to prove a document by way of primary or secondary evidence is a rule of evidence. Whether the party seeking leave of the Court to lead secondary

evidence ultimately succeeds in proving the document or not is a question of fact and depends upon evidence. Petitioner has pleaded in the application the loss of original document. Under what circumstances document was lost is a question of fact and evidence. It is settled rule of pleadings that a party must disclose material facts and need not plead evidence. In the instant case material fact is loss of document and circumstances leading to loss is a question of evidence. This question can only be decided after providing opportunity to the party concerned to lead secondary evidence. To grant leave to lead secondary evidence does not mean the document is admitted in evidence nor it is a finding of the existence of any of the conditions indicated in Section 65 of the Evidence Act. It only amounts to holding an enquiry regarding existence of document and its loss under some circumstances. Failure or success to prove the existence of document or its loss can not be pre-determined that too without providing opportunity. Whether it is proved or not, is to be seen after the leave is granted and the material/evidence produced, is evaluated. The question raised by learned counsel appearing for the respondent is premature at this stage.”

Learned counsel for respondents No. 1 and 2 has next placed reliance on '**Tilak Raj versus Janak Raj 1998(2) R.C.R (Civil) 348**', wherein it was held as under:-

“It is a settled principle of law that application to lead

secondary evidence must state the existence of the document and its loss subsequent thereto. Once these two ingredients are stated and the court is prima facie satisfied that such a document had existed and it appears to have been lost subsequently, permission to lead secondary evidence to the applicant would be granted. The reliance by the learned trial Court on the judgment of this Court is well founded. In the present case the plaintiff is not taking the defendants by surprise and had produced the evidence in his power and possession right at the first instance before the Court. The ends of justice would demand that a party who has approached the Court must be given a fair chance to prove its case in accordance with law.”

In the present case, respondents No. 1 and 2 have filed suit for recovery. Petitioner and respondent No. 1 are real brothers. During the pendency of the suit, respondents No. 1 and 2 moved the applications for permission to lead secondary evidence qua dissolution deed 30.6.2003 and balance sheet for the year 2001-2002. The learned Trial Court while allowing the applications has held as under:-

“9. The original dissolution deed has not been traced out despite making best efforts by the plaintiff and the original balance sheet of the firm for the year 2001-2002 furnished by the defendants in the Income Tax Department has been weeded out as per statement of PW1 Mehtab Singh, Tax Assistant. Therefore, as per section 65 of Indian Evidence Act, secondary evidence to

prove the said documents can be allowed. Our Hon'ble Punjab and Haryana High Court in Ashok Kumar Sachdeva versus Harish Malik 2008(3) Civil Court Cases 397, has held that to prove a document by way of primary or secondary evidence is a rule of evidence. Whether the party seeking leave of the Court to lead secondary evidence ultimately succeeds in proving the document or not is a question of fact and depends upon evidence. Petitioner has pleaded in the application the loss of original document. Under what circumstances, the document has lost is a question of fact and evidence. It is settled rule of pleadings that a party must disclose the material facts and need not plead the evidence. In the instant case material fact is loss of document and circumstances leading to loss is a question of evidence. This question can only be decided after permitting to the party concerned to lead secondary evidence. To grant leave to lead secondary evidence does not mean the document is admitted in evidence nor it is a finding of the existence of any of the conditions indicated in section 65 of the Evidence Act. It only amounts to holding an enquiry regarding the existence of documents and its loss under some circumstances. Failure or success to prove the existence of document or its loss cannot be pre-determined that too without providing opportunity. Whether it is proved or not is to be seen after the leave is granted and the material evidence produced is evaluated.

The question raised by learned Counsel appearing for the respondent is premature at this stage. It is only after providing of opportunity to lead secondary evidence that the trial Court can form its opinion regarding the existence of document and circumstances enumerated in Section 65 for secondary evidence.

10. In view of the ratio of the above said judgments the existence and loss of original dissolution deed and balance sheet for the year 2001-2002 of the firm can only be determined when an opportunity is provided to the plaintiff to lead the evidence to that effect. Therefore, both the applications of the plaintiff for proving the dissolution deed dated 30.6.2003 and balance sheet for the year 2001-2002 of the firm by way of leading secondary evidence are allowed subject to proof of loss of the original dissolution deed as well as balance sheet and other just exceptions.”

The reasons given by the Trial Court while allowing the applications are sound reasons. The case of the plaintiff is that the original of the documents, sought to be proved on record by way of secondary evidence, have been lost. The applications have been allowed subject to proof of loss of the original documents as well as other just exceptions.

In the facts and circumstances of the present case, the judgment relied upon by the learned counsel for the petitioner fails to advance the case of the petitioner as it is based on different facts.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

**May 08, 2015
Gurpreet**