

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.2666 of 2014

Date of Decision: February 19, 2015

M/s Krishna Real Estate Enterprises Pvt.Ltd.Petitioner

Versus

M/s G.N.Motors and Builders and Ors.Respondents

CORAM: Hon'ble Mr. Justice Dr.Bharat Bhushan Parsoon.

Argued by: Mr.Aman Pal, Advocate
for the petitioner.

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Dr.Bharat Bhushan Parsoon, J.

Order dated 21.01.2014 of the lower court, whereby, application of the defendant-petitioner herein for leading secondary evidence to prove a sale deed was dismissed on 21.01.2014 by the lower Court, is under challenge in this Revision Petition.

2. It is claimed that the lower Court even ignored order of the Company Law Board Bench, New Delhi of 09.12.2013, whereby, respondent-plaintiff have been called upon to produce all the assets and documents of the Company but had not complied with the same. In short, it is claimed that when the document is not of the possession of the petitioner-defendant, the only recourse available with him is to prove the same by leading secondary evidence.

3. Section 65 of the Evidence Act, deals with matter in issue. The same is appended below for ready reference :-

“65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

(a) When the original is shown or appears to be in the 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, or

of any person legally bound to produce it,

and when, after the notice mentioned in section 66, such person does not produce it;

(b) 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 representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India to be given in evidence;

(g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other

kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents."

4. It is a conceded fact that the document which is sought to be produced by leading secondary evidence is in possession of one of the Directors of the Company. How secondary evidence then can be allowed when original of it admittedly is in possession of an identified person; neither loss nor mutilation nor damage to it has been alleged.

5. Mere assertion of the applicant petitioner-defendant is that the said Director who is in possession of the document is not interested in delivering possession of the document to the Company is not enough. There is not even a whisper that the said Director was cited as a witness to produce the said document and has refused to appear in the court. There is no material to show that any effort was made by the petitioner-defendant to procure the original document by serving notice upon the said Director to produce the document. Clearly enough there is no denial on record by the Director of the Company, who is alleged to be possession of the document.

6. The application is based on imaginary plea that the Director in possession of the document is not going to deliver the same to the petitioner-defendant. Even Order Annexure P-6 of the Company Law Board, New Delhi, Bench New Delhi, no where mentions about production of this document by the concerned Director of the Company. The petitioner has not been able to convince this Court as to how order dated 09.12.2013 (Annexure P-6), helps the petitioner in the matter of production of secondary evidence of the document loss of which has not been established.

7. The impugned order is not only well-written but is elaborate wherein discussion of facts as also of attending circumstances with law

applicable has effectively been made. This revision petition, being devoid of any merit, is thus dismissed.

February 19, 2015
anil

(Dr.Bharat Bhushan Parsoon)
JUDGE