
IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.4643 of 2012
Reserved on 10.2.2015.
Date of decision: 13.03.2015

Ram Kumar

....Petitioners

Versus

Baljit Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Jatinder Nara, Advocate for the petitioners.

Mr. Anurag Jain, Advocate for the respondent.

G.S.Sandhawalia J.

Challenge in the present revision petition filed under Article 227 of the Constitution of India by the petitioner/plaintiff is to the order dated 28.7.2012 whereby the Additional Civil Judge (Senior Division), Ratia has declined the application filed for granting permission to lead secondary evidence of the pro-note and receipt dated 22.2.2006.

The reasoning given by the trial Court is that the plaintiff would have to first prove its existence and the circumstances of its loss then only he could be given permission to lead secondary evidence, which could only be led in consonance of what has been provided under Section 63 of the Indian Evidence Act, 1872 (hereinafter referred to as "the Act"). At the time of filing of the suit, the plaintiff had only placed on record the photocopy of the pro-note and the receipt. Since the original had been lost on the date the case was fixed for plaintiff's evidence after availing three opportunities, the original had never been produced as required under Order 13 Rule 1 CPC. The existence of the document in question was held not to be proved and the same could not be admitted into evidence.

The Civil Suit for recovery of ₹ 4,08,000/- whereby principal amount

was ₹ 3,00,000/- and ₹ 1,08,000/- was the interest element was filed on 31.3.2009 on the strength of the pro-note and receipt dated 22.2.2006.

The respondent/defendant took various pleas including the plea of limitation but on merits never specifically denied the existence of the pro-note and the receipt in question. It was his case that the consideration had never been passed and the pro-note had been got fabricated by the plaintiff in collusion with the so called witness and in collusion with the scribe. Accordingly, the same was held out not to be binding upon him. It was further alleged that the plaintiff and defendant had been friends and used to consume liquor and in drunkard condition he might have got his signatures (which alleged fact had also been not admitted) on the alleged pro-note. The alleged pro-note thus was denied being illegal, fabricated and not enforceable.

The application dated 23.2.2012 for granting permission to lead secondary evidence was filed on the ground that when the case was fixed for plaintiff's evidence on 9.1.2012, the plaintiff had gone to the photostat shop outside the Court premises to get the same photo copied and he misplaced the pro-note in question which could not be found in spite of making various efforts. He had lodged a report with the Police Post concerned and therefore, he filed an application for granting permission to lead secondary evidence.

The said application was contested by filing reply dated 19.5.2012 wherein it was mentioned that the suit was based on the pro-note which was result of fraud and it was bogus and had been prepared after fabrication. The loss was alleged to be a false story set up. The report with the Police Post was also a false report and only false evidence had been sought to be created. Accordingly, the permission sought for leading secondary evidence by proving the photo copy was rebutted and it was alleged that he had purposely only attached the photo copy of the document in question along with the plaint.

Accordingly, it was pleaded that the application be dismissed.

Counsel for the petitioner has accordingly contended that the reasoning given by the trial Court is not justified and permission should have been given to lead secondary evidence since existence of document in question was not such denied and it was only held out by the respondent/defendant that it was a forged document. It is further submitted that even if permission for leading secondary evidence is granted still the petitioner/plaintiff would have to prove its existence and execution and the impugned order is not sustainable.

Counsel for the respondent on the other hand has vehemently submitted that the existence of pro-note was a valid criteria and only then the application under Section 65 of the Act could be allowed and the plaintiff could only be then permitted to prove the contents of the document in question. He has placed reliance upon the judgment of this Court in **Krishan Kumar Vs. Pal Singh 1989(1) PLR 55** and **Ved Parkash Vs. Smt. Kartar Kaur 1993(2) PLR 452.** It is further submitted that the case had been fixed for 27.9.2011, 5.11.2011 and 9.1.2012 for plaintiff's evidence and on the last date the document was alleged to have been lost. Therefore, it was a concocted story and in case photo copy was allowed to be brought on record and the application was to be allowed, the defendant would suffer irreparable loss as the hand-writing could not be compared with the photo copy.

After hearing counsel for the parties, this Court is of the opinion that the reasoning given by the trial Court is only on the ground that three effective opportunities have been granted and on the last date as argued by the counsel for the respondent, the original pro-note had not been produced. The trial Court had not been intimated on that date and the application had been moved in between and therefore, conduct of the plaintiff was commented upon and the existence of document was not held to be proved prima-facie.

This reasoning cannot be held to be justified in any manner.

Reference has been made in the pleadings which have been discussed in detail.

The defence itself of the defendant/respondent was that it was a forged and fabricated document and therefore, it cannot be said that it had not existed at all as has been held by the trial Court. Rather a plea taken was that defendant might have signed on the same in the stage of intoxication. The provisions of Section 65 of the Act which guide the Courts to give permission for leading secondary evidence of documents is that when the existence, condition or contents of documents where the originals have been lost, thus could not be denied to the plaintiff. The probative value of the photostat copy keeping in view the fact as under what circumstances the document came into being, will naturally be adjudicated upon by the trial Court. As to whether it is a forged and fabricated document or whether actually it was a subject matter of consideration changing hands or was a result of fraud will necessarily have to be seen by the trial Court. Vide application which had been filed, the plaintiff is only seeking an opportunity to prove the existence and the loss of the pro-note and the defendant could only be afforded an opportunity to rebut the said existence or loss in view of the plea which the plaintiff had raised and on the basis of evidence led. The trial Court would thereafter only independently assess whether the evidence led could be admitted as secondary evidence and the probative value and the authenticity of the same.

The judgment relied upon in **Ved Parkash's case** (supra) is not applicable since in the said case the dispute pertained to production of rent receipt, existence of which itself was denied. The trial Court had found the existence of the document was a doubtful one and therefore, declined the prayer of the plaintiff for leading secondary evidence which order was upheld. The facts herein are not similar to the said case and therefore, distinguishable.

Similarly, in **Krishan Kumar's case** (supra), this Court held that only when the existence of the original will was proved, the Court would allow the respondent to lead secondary evidence and no evidence had been led in

that case and the existence of will in question had been held to be proved by the production of the said copy and the judgment is thus based on different facts altogether.

Resultantly, the impugned order dated 28.7.2012 cannot be held to be justified and is set aside. The application for grant of permission to lead secondary evidence is allowed subject to the petitioner's leading evidence to prove the existence and the loss of the alleged pro-note. The respondent shall be accordingly also afforded opportunity to rebut the same and thereafter, the trial Court will decide as to whether the photocopy of the pro-note can be admitted by way of secondary evidence. The value of the photo copy of the pro-note would be accordingly assessed on the basis of the evidence produced.

Accordingly, the present revision petition is allowed. However, needless to say that anything observed herein is only for the purpose of deciding the present revision petition and shall not prejudice the trial Court.

13.03.2015
pka

(G.S.SANDHAWALIA)
JUDGE