

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

CR-5503-2015

Date of decision-28.09.2015

RAJESH KUMAR

...Petitioner

VS

M/S BABU RAM & ANOTHER

...Respondents

CORAM:- HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:- Mr. Parminder Singh, Advocate
for the petitioner.

RAJ MOHAN SINGH, J (Oral)

Defendant No. 2, now petitioner has filed this revision petition with the background that defendant No.2 was a guarantor for payment of dues and a guarantee-nama was executed on a letter-head of firm M/S Rajesh Kumar & Sons on 11.11.2008. Said guarantee-nama was handed over to President of Mandi Association. Guarantee-nama was in possession of President of Mandi Association but the same was misplaced.

Now an application has been moved for producing the photocopy of guarantee letter dated 11.11.2008 as secondary evidence.

Defendant No.2 has opposed the application by denying the factum of execution of guarantee-nama in any manner. Defendant No.2 has also contested that neither the guarantee-nama was executed by him nor the same was given to the President Mandi Association. DDR recorded in the said context is belated one and the same is also false and fabricated.

Apparently, President Mandi Association, Dharam Singh, has been examined as PW-2, who has pleaded that the guarantee letter dated 11.11.2008 has been lost. For allowing the application under Section 65 of Evidence Act, firstly existence of document has to be established and thereafter loss has also to be

statement of PW-2 is categoric in nature. At this stage, probative value of the document is not to be commented upon. Trial Court has exercised its jurisdiction by allowing the application for leading secondary evidence which according to this Court is not suffered with any jurisdictional error.

Having considered the matter, this Court does not find any illegality in the impugned order. Accordingly, this revision is dismissed.

September 28, 2015

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**(RAJ MOHAN SINGH)
JUDGE**