

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

CR No. 7135 of 2014

Date of decision: 28.8.2015

Kuldeep Kumar Khosla

....Petitioner

vs.

State Bank of Bikaner and Jaipur and ors

....Respondents

CORAM: - HON'BLE MR. JUSTICE ARUN PALLI

Present: - Mr. Rakesh Nehra, Advocate for the petitioner.

Mr. A.K.Ahuja, Advocate for respondent No. 1.

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Arun Palli, J (Oral)

Petitioner-defendant No. 3 has assailed the order dated 14.8.2014, whereby the application moved by the respondent No. 1-plaintiff, under Section 65 of the Evidence Act to lead secondary evidence was allowed as also the order dated 10.9.2014, whereby the prayer of the petitioner-defendant under Section 10 of the Civil Procedure Code to stay the proceedings before the trial Court was since declined.

In an application moved by respondent No. 1-plaintiff, it was maintained that all the original documents pertaining to the matter in issue were on record in securitization application No. 91/2005 titled Mr. Kuldeep Kumar Khosla vs. State Bank of Bikaner and Jaipur before the Debt Recovery Tribunal-III, New Delhi and in the absence of the original documents, plaintiff was unable to lead his evidence. However, the said matter before the Debt Recovery Tribunal is still pending and all the documents that were required for the purpose of exhibition in these proceedings were deposited with the Tribunal and the plaintiff be permitted

to prove the certified copies of the said documents from the record of the DRT-III, New Delhi.

In response, the petitioner opposed the prayer made by the respondent-plaintiff and maintained that as he has not signed any such document nor created any mortgage of his immovable property in favour of the plaintiff. There was no occasion to deposit the documents in original with the Tribunal. Further the prayer of the petitioner could not be countenanced in terms of Section 65 of the Evidence Act.

On a consideration of the matter in issue, the application moved by the respondent No. 1-plaintiff was allowed and it was accordingly concluded as under: -

“I have perused the application. Arguments advanced by learned counsel for the respondent, no doubt, is sustainable. There is no ground of loss of document or that documents are not in possession of any person to whom, this Court cannot direct to produce the same. However, clause C of Section 65 of Indian Evidence Act, clearly provides that when the party offering evidence of its contents cannot, for any other reason not arising from his own default of neglect, produce it in reasonable time, any secondary contents of document is admissible. In the present case, it is version of the applicant that original documents are with the file case titled Mr. Kuldeep Kumar Khosla vs. State Bank of Bikaner and Jaipur pending at Debt Tribunal-III, New Delhi. This version itself show that the documents cannot be produced by the applicant and there is no default or neglect on the part of the applicant. If the documents are with the Debt Tribunal-III, New Delhi, the same cannot be

produced by the applicant. In these circumstances, there is justification in the present. Hence, the same is hereby allowed.”

Learned counsel for the petitioner submits at the outset that he does not press his petition as regards his prayer to stay the proceedings before the trial Court.

The respondent-plaintiff is neither negligent nor defaulted in producing the original documents as these are concededly on record before the Tribunal in securitization application No. 91/2005 titled Mr. Kuldeep Kumar Khosla vs. State Bank of Bikaner and Jaipur before the Debt Recovery Tribunal-III, New Delhi. That being so, the prayer advanced by the respondent-plaintiff to prove the necessary documents by producing the certified copies of the original from the records of the Tribunal was rightly granted. Learned counsel for the petitioner could not point out as to how the conclusion that has been arrived at by the trial Court was either contrary to the position on record or erroneous in law. That being so, no interference is warranted in exercise of revisional jurisdiction under Article 227 of the Constitution of India, the petition being devoid of merits is dismissed.

**(Arun Palli)
Judge**

28.8.2015
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Referred to Reporter