

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

CR No.936 of 2014

Date of decision : 20.11.2015

Tarlochan Singh and ors.

...Petitioners

Versus

Mohinder Singh and ors.

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.**

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. H.S. Dhillon, Advocate for the petitioners.

Mr. Ramandeep Singh Pandher, Advocate for respondent No.1.

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**AMIT RAWAL, J. (Oral)**

Challenge in the present petition is to the impugned order dated 02.12.2013, whereby application filed by the respondent-defendants for seeking secondary evidence vis-a-vis agreement dated 11.08.2009 alleged to have been lost on 01.10.2013, has been allowed.

Mr. H.S. Dhillon, learned counsel appearing on behalf of petitioners contends that documents sought to be placed on record was not placed along with written statement in consonance with the provision of Order 13 of the Code of Civil Procedure. Even pith and substance of the documents reveals that some money transaction was there. Once the

document itself is not admissible, there was no need for seeking the liberty/permission to lead secondary evidence. He further submits that trial Court has allowed the application in a most capricious and erroneous manner without even noticing the provision of Section 65 of Indian Evidence Act that for leading secondary evidence essential requirement is to prove of existence and loss in essence, the Court has dispensed with the essential requirement of law, thus, impugned order is not sustainable.

Mr. Ramandeep Singh Pandher, learned counsel appearing on behalf of respondents-defendants submits, that the agreement was specifically pleaded in the written statement though copy thereof was not attached but the fact remains that photocopy is part of the pleadings. He further submits that documents sought by way of secondary evidence is essential and necessary to be prove on record for the purpose of determining the possession.

I have heard learned counsel for parties and appraised the paper book.

Section 65 of the Indian Evidence Act provides granting the liberty to the parties to seek the permission of the Court to prove the documents by way of secondary evidence, in the absence of the primary documents. The agreement dated 11.08.2009 had not seen the light of the day. The provision of Order 13 of the Code of Civil Procedure had not been complied with, in essence the original have not been placed on record. Had the original been in existence, nothing prevented the defendants to place on record the same so that the question of losing the same in the month of October 2013 did not arise. The trial Court in my view has not appreciated

the aforementioned facts. There is another aspect of the matter. The trial Court has thrown the provision of Section 65 of the Act to wind as it has not noticed the purpose of granting permission to lead the secondary evidence, it has to be preceded by proving its existence and loss.

Be that as it may, once documents, which are sought to be produced on record, in my view, are not admissible and cannot be lead in secondary evidence, thus trial Court, has, in my view, erroneously granted liberty to lead secondary evidence.

In view of aforementioned facts, impugned order is set aside.

Resultantly, revision petition is allowed.

**20.11.2015**

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**(AMIT RAWAL)  
JUDGE**