

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

**C.M. NOS.3705-06 CII OF 2016 &
CIVIL REVISION NO.168 OF 2015
DATE OF DECISION: FEBRUARY 19, 2016**

Charanjit Singh

.....Petitioner

VERSUS

Harbir Kaur

....Respondent

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vikas Sagar, Advocate,
for the petitioner.

Mr. Aayush Gupta, Advocate,
for the respondent.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.3705 CII of 2016

Prayer in this application is for preponement of the hearing of the revision petition, which is listed for hearing on 01.03.2016.

With the consent of the parties, the hearing of the revision petition is preponed to today and the same is taken on board by allowing the present application.

C.M. No.3706 CII of 2016 & Civil Revision No.168 of 2015

Challenge in this revision petition is to the order dated 14.11.2014 passed by the Rent Controller, Ludhiana, whereby the application of the petitioner-tenant for leading secondary evidence on the basis of a writing, which he asserts is a rent deed dated 10.05.2004 executed

between the petitioner-tenant and the respondent-landlord, is sought to be proved, as he has appended a photo copy of the same alongwith the written statement, on which Jagjit Singh is the attesting witness, who is son of the landlord and also the power of attorney holder, by confronting him with the said document, has been dismissed.

It is the contention of learned counsel for the petitioner that the Court below has not appreciated that the document in question has been duly executed by the parties and the original thereof is in possession of the respondent-landlord and, therefore, the photo copy of the rent deed dated 10.05.2004 could only have been produced by the petitioner-tenant. Merely because the respondent-landlord has denied the execution of the said document, would not be a ground in itself for denying the prayer made in the application. He further contends that the mandate of Section 65 of the Indian Evidence Act, 1872 (for short, “the Act”) has been satisfied when the possession of the document has been shown to be with the respondent-landlord. In support of his contention, he has placed reliance upon the judgements of this Court reported as Prem Lata Vs. Dwarka Parsad and others, 2014 (2) R.C.R. (Civil) 458, Surinder Kaur Vs. Mehal Singh and others, 2014 (1) R.C.R. (Civil) 467 and Rajesh Yadav and others Vs. Balbir Singh and others, 2014 (5) R.C.R. (Civil) 941.

On the other hand, counsel for the respondent asserts that mere assertion of the petitioner that the original document is with the respondent-landlord would not be enough, when no sufficient proof has been placed on record with regard to the foundational facts. Merely because a photo copy has been produced in evidence does not amount to its proof and the photo copy in itself is suspicious and, therefore, the same should not be relied

upon. In support of this contention, he places reliance upon the judgement of this Court in Rekha Rani Vs. Vineet Kumar and others, 2015 (Suppl.) Civil Court Cases 379 (P&H). He, therefore, supports the order which has been impugned in the present revision petition.

I have considered the submissions made by learned counsel for the parties and with their assistance have gone through the impugned order and do not find any illegality in the same as the mandate of Section 65 of the Act has not been satisfied. Mere assertion of the petitioner-tenant that the original of the rent deed dated 10.05.2004 is in possession of the respondent-landlord would not be enough as the execution of the document and the circumstances under which it was executed have not been laid down in the application, whereby permission to lead the secondary evidence was sought for. Further, the said document does not indicate that the original has been retained by the landlord and the photo copy has been given to the tenant. The photo copy has not been attested by the landlord, which would point towards its authenticity. Therefore, the due execution of the writing and its execution as also its possession with the respondent-landlord is doubtful and cannot be accepted.

The judgements, on which reliance has been placed by counsel for the petitioner i.e. Prem Lata's case (supra), Surinder Kaur's case (supra) and Rajesh Yadav's case (supra), would not be applicable to the facts and circumstances of the present case as the petitioner, who is seeking to produce the photo copy of the rent deed dated 10.05.2004, has not laid down the foundational facts to prove that the original document existed and is in possession of the opposite party as detailed above.

The judgement in the case of Rekha Rani (supra) relied upon by

counsel for the respondent-landlord would cover the case in hand and, therefore, the impugned order, being in accordance with law, is upheld.

The revision petition, therefore, stands dismissed.

Since the main revision petition stands dismissed, C.M. No.3706 CII of 2016 for staying the further proceedings before the trial Court is dismissed.

February 19, 2016
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE