

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

CR No. 5467 of 2015 (O&M)

Date of Decision:-05.04.2016

Pardeep Kumar & anr.

....Petitioner(s)

vs.

M/s Sekhon Traders Co. & ors.

....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE AJAY TEWARI

Present:- Mr. Rakesh Chopra, Advocate,
for the petitioners.

Mr. Gopal Sharma, Advocate,
for respondent No.1.

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
- 2. To be referred to the Reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

AJAY TEWARI, J.

This petition has been filed against the order of the learned Rent Controller dated 13.5.2015 rejecting an application for secondary evidence.

As per the case of the petitioners, Tek Chand, father of petitioner No.1, had purchased the property on 06.11.1968 and let out the same on rent vide rent note dated 18.3.1994. However, Tek Chand died in the year 1988 and after his death, the petitioners could not trace out the original rent note. Therefore, since the petitioners had only a photostat copy of the rent note, they wanted to prove it by way of secondary evidence. The

Rent Controller declined it primarily on the ground that a photostat copy being something which can be easily manipulated, the application cannot be allowed.

Learned counsel has relied upon a judgment of this Court in the case of **Prem Lata vs. Dwarka Parsad and others**, 2014(1) ICC 785 wherein it has been held as follows:

“7. I have given my thoughtful consideration to the matter. A party can be permitted to lead secondary evidence of a document on proving existence, execution and loss of the original document. Permission to lead secondary evidence in the instant case can also be granted subject to proof of the aforesaid facts.

8. There is no absolute rule that photostat copy of a document is not admissible as secondary evidence. In the cases of Ashok Dulichand (supra) and Mukesh Kumar alias Motta (supra), it has not been laid down that in no circumstances, photostat copy of a document can be admitted as secondary evidence thereof. On the contrary, it is for the party seeking to produce the photostat copy as secondary evidence to depict that it is correct copy of the original document. Subject to proof of the same, photostat copy of a document is admissible as secondary evidence of the document in view of Section 63(2) of the Evidence Act, having been prepared by mechanical process.

9. For the reasons aforesaid, I find that the petitioner is entitled to lead secondary evidence of the Sannad in question subject to the conditions stated hereinbefore. Resultantly, instant revision petition is allowed and impugned order (Annexure P-5) passed by the trial Court

is set aside. Application (Annexure P-4) filed by defendant No.1-petitioner is allowed and the petitioner is permitted to lead secondary evidence of the Sannad in question dated 04.07.1949 subject to proof of existence, execution and loss of the original document. I have not expressed any opinion regarding the existence or loss of the aforesaid document or regarding probative value thereof.”

Learned counsel for the respondent is not in a position to cite any contrary judgment or point out any mistake in this judgment.

In the circumstances, the petition is allowed. The petitioner would be entitled to lead secondary evidence on the rent note on the same terms as above subject to proof of existence, execution and loss of the original document.

April 05, 2016
poonam

(AJAY TEWARI)
JUDGE