

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

CR No. 7008 of 2013 (O&M)

Date of decision: February 8, 2016

Dal Chand Saini and others

...Petitioners

Versus

Nirdosh Kumar and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers 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?**

Present: Mr. Manoj Kumar Sood, Advocate,
for the petitioners.

Mr. Amit Jain, Advocate,
for respondents No. 1.

K. KANNAN, J. (Oral)

1. The revision is against the order accepting secondary evidence of the agreement to be given by the plaintiff in a suit for specific performance. The suit had been originally filed for permanent injunction in the year 2004 and an amendment was brought for securing the relief of specific performance. The plaintiff produced only a photo copy of the agreement and sought for permission to produce secondary evidence contending that he had lost it even on 11.7.2004 and a DDR has been entered for the complaint lodged with the police. The petition was contested by the respondent on the plea that if the document has been lost even prior to the institution of the suit, the same should have made reference in the plaint. There was also an attempt to bring the evidence of an Oath

Commissioner at the trial court to testify to the contentions that stamps papers were sold and document written on that day. The Oath Commissioner also gave evidence that he did not have the register containing any entry that he made for attestation of a document purported to be an agreement propounded by the plaintiff.

2. The counsel argues that the secondary evidence could not have been permitted without proof of loss of the original. It must be remembered that the requirement of Section 65 of the Evidence Act is that there shall be any one of the seven circumstances available before secondary evidence could be admitted. The loss of original is one such justification. The Evidence Act is a procedural law and the issue of whether the document was lost or not is a matter of evidence controlled by procedure. Order 6 Rule 2 of the Civil Procedure Code lays down that only essential facts to be pleaded and the matter of evidence need not be pleaded. It is ideal that there is a ground made in the pleading itself for production of secondary evidence, but if such pleading is not available, the correctness of the assertion could only be tested in the cross-examination and the document could not be thrown off the board at the threshold. There had been several decisions of by this Court in this regard to ensure a smooth flow of trial without obstruction by any party to seek for permission for filing secondary evidence. The attempt is only to ensure that the courts do not get embroiled by interim orders which can be brought for challenge at the preliminary stage. If a document is brought on an an assertion that the original is missing, the court is bound to receive it and allow the assertion to be put to test only in the cross-examination. Mere exhibition of a document does not dispense with proof to either establish that the document filed in court was

secondary evidence of exact re-production of the original in the manner contemplated under Section 63 of the Evidence Act or the requirement of proof that any of the circumstances existed. Trials are only to secure proof of what is required to be done, as spoken to by the parties and tested in the cross-examination. The law on the subject has been laid down in Anupam Jain Versus Smt. Kulwant Gupta Civil Revision No. 2991 of 2012 decided on 9.3.2015 that recounts several judgments of this Court reported from 2009 onwards till 2014. It is pity that the Presiding Officer does not keep himself abreast with law that gives room for such challenges against interim orders which are unnecessary.

3. The revision is dismissed with the above observations.

February 8, 2016
prem

(K.KANNAN)
JUDGE