

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.7339 of 2015 (O&M)
Date of decision:15.02.2016

M/s Bhavani Automotives and another ... Petitioners

Vs.

M/s Mahindra & Mahindra Ltd. ... Respondent

CR No.7365 of 2015 (O&M)

M/s Bhavani Agencies and others ... Petitioners

Vs.

M/s Mahindra & Mahindra Ltd. ... Respondent

CR No.7342 of 2015 (O&M)

M/s Divya Service and others ... Petitioners

Vs.

M/s Mahindra & Mahindra Ltd. ... Respondent

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. Madhav Pokhrel, Advocate
for the petitioners.

Mr. J.S. Mehindratta, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of three revision petitions

bearing Nos.7339, 7365 and 7342 of 2015 filed at the instance of petitioner-defendants, who are aggrieved of the impugned orders, whereby, the trial Court entertained/accepted the applications of the respondent/plaintiff for permitting him to place on record the certified copies of cheques by way of secondary evidence.

Mr. Madhav Pokhrel, learned counsel appearing on behalf of the petitioner-defendants submits that the impugned orders are not sustainable in the eyes of law as it did not suffice the ingredients of Section 65(c) of the Indian Evidence Act, much less, Order 13 Rule 10 of the Code of Civil Procedure. It is not a case where the original cheques have been lost. As per the averments made in the application, the original cheques are lying before the Court in respect of proceedings initiated under Section 138 of the Negotiable Instruments Act, 1881 at Andhra Pradesh/Srinagar, thus, prays for setting aside of the impugned orders.

Mr. J.S.Mehndiratta, learned counsel appearing on behalf of the respondent-plaintiff submits that petitioner-defendants are indulging into protraction of the litigation by moving one application or the another. Even when the complaints were filed, an objection was taken vis-a-vis territorial jurisdiction but the fact remains that issuance of original cheques was admitted in the written statement though as blank, therefore, no prejudice would be caused if the secondary evidence is allowed. In support of his aforementioned contentions, he relied upon the Division Bench judgment of Hon'ble

Karnataka High Court in **Papanna and others vs. H.Doddee Gowda and others 1989 AIR (Karnataka) 61**, wherein, by relying upon the provisions of Order 13 Rule 10(2) of the Code of Civil Procedure, the Court accepted the request of applicant, seeking to lead secondary evidence. He also relied upon the provisions of Section 65(c) of the Indian Evidence Act, thus, submits that there is no illegality and perversity in the orders under challenge.

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

I am of the view that there is no substance in the argument of Mr. Mehndiratta, for the reasons, that once the primary evidence is available, secondary evidence of the same cannot be permitted. It is only the circumstances of the loss and other situation, as admissible under Section 65(c) of the Indian Evidence Act, can be allowed. It is not a case of the respondent that original cheques have been lost, rather they are lying in custody of the Court in India and there is a procedure for summoning the record from the competent Court by securing in accordance with law. Even if plaintiff has led an evidence vis-a-vis as a consequential effect of the impugned orders, the same would not be taken into consideration for the foregoing reasons.

The judgment rendered in Papanna's case (supra) cited by Mr. Mehndiratta, would not come in his rescue, for, as per the provisions of Order 13 Rule 10(3) of the Code of Civil Procedure,

which prohibits the Court from taking into consideration the evidence which would be inadmissible in evidence.

In view of the aforementioned observations, I am of the view that the impugned orders are not sustainable in the eyes of law and shall not prevent the respondent-plaintiff to lead evidence in support of his case by summoning the record from the concerned Court where the original cheques are lying.

There is some force in the arguments of Mr. Mehndiratta, vis-a-vis delaying tactics being adopted by the petitioner-defendants but the fact remains that it is plaintiff who has to lead evidence. It is expected that trial Court shall expedite the trial of the suit as expeditiously as possible.

Accordingly, the impugned orders are set aside and revision petitions are allowed.

(AMIT RAWAL)
JUDGE

February 15, 2016
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