

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

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CR No.1269 of 2017 (O&M)

Decided on :20 .02.2017

M/s Sachdeva Store and another

... Petitioners

Versus

Amit Kumar

.. Respondent

CORAM : HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present : Mr.Harsh Vardhan Shehrawat, Advocate for
Mr.C.S.Bakshi, Advocate
for the petitioners.

G.S.Sandhawalía, J. (Oral)

The revision petition is barred by limitation by 65 days. In the application, it is mentioned that the petitioner had to undergo an open heart surgery at Escorts Fortis Hospital on 04.03.2016 and thereafter, was undergoing treatment. Accordingly, sufficient cause having been shown the case is being decided on merits accepting the application for condonation of delay.

The present revision petition has been filed to challenge the order dated 28.09.2016 passed by the Rent Controller, Batala whereby an application under Section 65 of the Indian Evidence Act, 1872 (in short the 'Act') filed by the respondent has been allowed.

The respondent-landlord was thus permitted to lead secondary evidence qua sale deed dated 27.06.2007 subject to all just exceptions to prove its existence and validity. The petition had been filed by the respondent on the ground that he had purchased the property in question from Gurdeep Singh and his brother, Ajit Singh vide sale deed dated 27.06.2007 and had become owner in possession. The petitioners

were thus a tenant in the premises against whom eviction petition was accordingly, filed. The same was opposed by way of filing a written statement taking the plea that the sale had not taken place and its legality, validity, genuineness and correctness was challenged. It was submitted that it is a false and fabricated document. The application under Section 65 of the Act, was then filed that the original sale deed was lost and its certified copy had been procured from the Sub Registrar, Batala and therefore, the applicant be allowed to tender evidence and to get proved the certified copy of the sale deed by way of secondary evidence.

In reply, it is submitted that it was necessary to prove firstly, the loss of the document, and therefore, the present application under reply was pre-mature. The original document was not traceable which was out of the pale of grounds mentioned in Section 65 (a) to (g) of the Act. Therefore, it was necessary to prove first that it had been either destroyed or lost and ingredients of Section 65 of Act were not fulfilled. The Rent Controller took the view that apart from original document being destroyed or lost, the party offering evidence of its contents can seek permission if it could not be produced within reasonable time. It was held that prejudice could be caused to the respondent-landlord if permission is not granted to lead secondary evidence.

The reasoning, as such, recorded by the Rent Controller cannot be faulted. A specific plea had been taken that the sale deed itself has been lost and on that account, the application was filed. The same has been allowed, whereby the landlord has, subject to all exceptions, to prove its existence and validity. It is to be noticed that the bone of

contention as such is regarding the relationship inter se parties and the landlord is claiming, on the basis of said sale deed which is being contested as such, therefore, it is very much required by the court to adjudicate on the said issue. The allowing of the application will thus be in the furtherance of the exercise.

It is further to be noticed that the certified copy of the sale deed having been made available from the Sub Registrar, had been obtained therefore, Rent Controller was well justified in allowing the application which was subject to prove of its existence and validity. Under Section 65 (e) of the Act, secondary evidence of the existence, condition or contents of a document may be given when the original is a public document within the meaning of Section 74 of the Act. The definition of public document under Section 74 (2) is public records kept in any State of private documents. The office of the Registrar thus keeps a public record of sale deeds registered in that office and under Section 76 of the Act, the officer having custody of a public document is to give a certified copy. It is therefore, axiomatic that a certified copy is secondary evidence of the public record kept in the Registrar's Office, and is admissible in evidence under Section 65(e) & (f) of the Act.

Accordingly, no fault can be found in the order passed by the Rent Controller.

Dismissed in limine.

[G.S.Sandhawalia]
Judge

20.02.2017

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No