

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

**Civil Revision No.4024 of 2017 (O&M)
Date of Decision: 17.08.2017**

Gurleen Singh and another

.....Petitioners

Vs

Rajinder Kumar Bansal and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Atul Goyal, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Petitioners are aggrieved of the order dated 28.04.2017 (Annexure P-7) passed by the Civil Judge (Jr. Divn.) Ludhiana whereby application under Section 65 of the Indian Evidence Act (hereinafter to be referred as 'the Act') for permission to lead secondary evidence by the plaintiffs was allowed.

[2]. It has come on record that two suits bearing Civil Suit No.428 of 1983 titled '*Bhupinder singh and others vs. Major Lal Singh and others*' and Civil Suit No.429 dated 10.07.1983 titled '*M/s Shanti Niketan vs. Major Lal Singh and others*' were filed before the trial Court. Both the suits were decreed on 03.10.1983. The defendants have denied filing of the suits and

passing of the decrees therein. The original court files were summoned by the plaintiffs, but it was noticed that the files have been destroyed being an old record. The plaintiffs wanted to prove the complaints/pleadings of both the aforesaid suits.

[3]. During course of arguments, learned counsel for the petitioners submitted that though the passing of decrees are not in dispute, but the defendants/petitioners are apprehensive that the plaintiffs may adduce some forged and fabricated documents under the garb of application for leading secondary evidence.

[4]. As per Section 65 of the Act, filing of an application for secondary evidence is not contemplated as necessary procedure. Secondary evidence can be produced where original has been destroyed or lost or the party offering evidence on his contest cannot, due to any other reason, not arising from his own default produce the same in reasonable time. The prayer can be allowed, when document is not traceable. The exhibition of a document and inviting an objection thereupon has to be seen in the context of Order 13 Rule 4 CPC. Practice of objecting to the exhibition of the document and inviting the Court to give finding on the relevancy of the document has an inevitable consequence of holding up the trial. If Court is not in a position to take immediate decision on the relevancy or

admissibility of the document, the only exception could be when the document is insufficiently stamped or the document not stamped since the bar to reception of the document is absolute under Section 35 of the Indian Stamp Act. Such a phenomenon stands on different footing than the instance, where admissibility of document would be proved at a later stage. Mere exhibition of a document does not dispense with the proof of execution.

[5]. In case of loss of original document, the party should be granted leave to lead secondary evidence. Whether the party seeking leave of the Court for leading secondary evidence ultimately succeeds in proving the document or not is a question of fact which depends upon the evidence. The grant of leave to lead secondary evidence does not mean that the document is admitted in evidence, nor it is a finding of the existence of any of the conditions indicated under Section 65 of the Act. It only amounts to holding of an inquiry regarding existence of a document and its loss under some circumstances. Failure or success to prove the existence of document or its loss cannot be pre-judged that too without providing any opportunity to the parties. Whether the document is proved or not, is to be seen after grant of leave and evidence produced is evaluated by the Court. The apprehension shown by learned counsel for the petitioners appears to be wholly pre-mature at this stage.

[6]. In view of above, I find no error of jurisdiction in the impugned order passed by the trial Court. This revision petition is accordingly dismissed.

August 17, 2017

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No