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

**Civil Revision No.5729 of 2016
Date of Decision: 07.11.2017**

MANJIT SINGH

.....Petitioner

Vs

JAGTAR SINGH AUJLA AND ORS.

....Respondents

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

Present: Mr. H.S. Bhullar, Advocate
for the petitioner.

Mr. Vikas Bahl, Senior Advocate with
Ms. Japneet Kaur, Advocate and
Mr. Rohan Jain, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 08.08.2016 passed by the Civil Judge (Jr. Divn.) Chandigarh vide which application under Section 65 of the Evidence Act was rejected.

[2]. Brief facts are that the petitioner being defendant No.2 in the suit, contested the same and relied upon a Will which was subject matter of another suit *qua* which Regular Second Appeal is pending in the High Court. Photostat copy of the unregistered Will was sought to be adduced in the form of

secondary evidence.

[3]. The application has been declined on the ground that proof of loss and existence of the document has not been substantiated by means of any evidence on record. The Will in question is unregistered document. The evidence led by the defendants does not show any ingredients of existence or loss of the document.

[4]. Learned counsel for the petitioner submitted that the factum of loss came to be known and thereafter the application in question was filed. A photostat copy of the Will in question has already been brought on record as marked document. The prayer for leading the secondary evidence was pressed into service on the ground that the authenticity and admissibility of the document would be gone into by the trial Court at the relevant stage and the petitioner should be granted leave to lead secondary evidence. The ultimate success of the case would be dependent upon the admissibility of evidence to be led by the petitioner and appreciated by the trial Court at the relevant stage.

[5]. Learned counsel further submitted that at the stage of granting leave to lead secondary evidence it does not mean that the document is admitted in evidence, nor it is a finding of

existence of any of the conditions as indicated in Section 65 of the Evidence Act. At this stage, it is only to hold an enquiry regarding existence of document and its loss under some circumstances. Failure or success to prove the existence of document or its loss cannot be pre-determined.

[6]. On the other learned Senior counsel for respondents No.1 and 2 vehemently opposed the prayer of the petitioner on the ground that all the DWs have been examined. No statement has been made by any of the witnesses in respect of existence or loss of document in question. Even no whisper has been made in the written statement and in the affidavit submitted in examination-in-chief by the petitioner. The defendants' evidence had already been closed and the case is fixed for rebuttal evidence. The entire evidence led by the defendants does not qualify the conditions for allowing secondary evidence.

[7]. I have considered the submissions made by learned counsel for the parties.

[8]. It is a settled position of law that mere exhibition of document does not dispense with proof of its execution. There is no requirement for filing application for reception of secondary evidence. The court should leave it to the opposite party to elicit in the cross-examination that the grounds made by the applicant

are incorrect and the document sought to be produced as secondary evidence ought not to be received in evidence. Thereafter, the Court will take decision on the basis of material available on record, whether loss or existence of the document had been established or not.

[9]. At this stage, it will be impossible for the Court to adjudge whether any loss is established or otherwise. Leading of secondary evidence is like an enquiry for proving existence of a document or loss thereof, therefore, passing of order on the objection at this stage would amount to '*archaic practice*' and the Court cannot disregard the attempt of a party for production and exhibition of document and such an attempt cannot be thrown at this stage. The admissibility of the document cannot be commented upon at this stage, lest it may prejudice the case of either side at the time of final adjudication. The photostat copy of the document which has already been marked on record would be commented upon after conclusion of proceedings at a later stage.

[10]. In view of above, the trial Court is directed to consider the admissibility, relevancy, legality and validity of the document after considering the material on record in accordance with law at the time of final adjudication of the case. The trial Court would be within its right to see the validity and admissibility of

the document at the relevant stage. The document can be exhibited with an endorsement of an objection by the plaintiff/respondents at this stage and thereafter the trial Court shall proceed to decide the admissibility and validity of the document produced by the defendant/petitioner as secondary evidence in accordance with law and then shall proceed to decide the suit on merits at the earliest.

[11]. With the aforesaid directions, this revision petition is disposed of.

November 07, 2017

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No