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

**CR No.5810 of 2015 (O&M)
Date of Decision:-15.11.2017**

Anil Kumar Deswal

.....Petitioner

Versus

Rishi Verma & another

.....Respondents

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

Present: Mr. Ajay Ghangas, Advocate
for the petitioner.

Mr. Vikram Singh, Advocate
for respondents No. 1 & 2.

RAJ MOHAN SINGH, J. (Oral)

Learned counsel for the petitioner has assailed the order dated 20.08.2015 passed by Addl.Civil Judge (Sr.Division), Rohtak vide which application under Section 65 of the Evidence Act was dismissed.

A suit of possession by way of specific performance was filed on the basis of agreement to sell dated 14.03.2011 with a consequential relief of permanent injunction. Plaintiff claims that the agreement to sell in question was got attested by Sandeep Mittal, Notary Public who had duly entered the same in his register. Aforesaid Notary Public was summoned along with

the register but he deposed before the Court that the register was taken into possession by the police in FIR No. 248 dated 01.06.2011 for the offences under Sections 457, 380, 420, 406, and 506 IPC at Police Station Urban Estate, Rohtak. Thereafter, Ahlmad of the Court was summoned along with the *challan* of the case. Ahlmad Mahinder Singh, appeared in the Court and stated that the register of Notary Public was not attached with the *challan*.

Learned counsel for the petitioner referred to writing of Roshan ASI, Police Post, PGIMS, Rohtak, who had issued the receipt to the effect that in the presence of witnesses the register of Notary Public dated 17.02.2011 to 31.03.2011 from Serial No. 1581 to 1777 was produced before him and the same was kept. A receipt was also written to that effect. A photocopy of the register was statedly available with the plaintiff which he wanted to produce as secondary evidence before the Trial Court. For allowing the application under Section 65 of the Evidence Act, existence of document and loss thereof are two principle considerations which are to be proved by the plaintiff, subject to aforesaid existence and loss of the documents, the application can be allowed. A mere exhibition of document does not dispense with proof of execution of the document, if the document is executed with an endorsement of objection by the

defendant, the plaintiff would be obligated to prove its execution at a later stage.

The Hon'ble Apex Court in case of **Bipin Shantilal Panchal versus State of Gujarat 2001(1) criminal RCR 859**, has castigated the practice of holding up trial on objections taken at the time of tendering of documents in evidence and held such a practice to be archaic practice.

Though, the aforesaid view was expressed in a criminal case but the same was followed in civil cases also. Leading of evidence at this stage would not crystallize any substantial right in favour of the plaintiff. The execution of document with the endorsement of objection by the defendant would be tested at the threshold of admissibility, validity and genuineness of the documents in terms of its execution and its nature can be considered at a later stage. Even though, there is no provision in law for de-exhibiting documents already exhibited in evidence but if the execution of an document is objected to then the same has to be answered in terms of its admissibility at a later stage and in the event of failure to prove its execution, the evidence can be eschewed by the Court. Attempt of a party for production and to exhibit the document cannot be thrown in the manner as suggested by the Trial Court. The offer of secondary evidence at best can be impeached in

cross-examination of the witnesses, if the Court finds that the secondary evidence is lacking in terms of existence and loss thereof, then the Court would be at liberty to eschew the same. Such a course is available only at a later stage. Reference can be made to the view expressed in the case **Dr. S.P. Arora versus Satbir Singh 2010(5) RCR(Civil) 350** and **Simmarpal singh versus Gautam Chand 2009(14) RCR 273.**

At this stage, leaving the petitioner to prove existence and loss of the document, this revision petition can be disposed of by accepting the application under Section 65 of the Evidence Act subject to existence and loss of the document at a later stage.

Disposed of.

(RAJ MOHAN SINGH)
JUDGE

November 15, 2017.

sahil soni

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No