

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No. 5490 of 2017 (O&M)

Date of decision:- 31.08.2017

Ram Chander

...Petitioner

Versus

Rattan Lal and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. A.K.Yadav, Advocate
for the petitioner.

RITU BAHRI J. (Oral)

This petition under Article 227 of the Constitution of India is for setting aside order dated 04.08.2017 (Annexure P-1) passed by the learned Civil Judge, Jr. Divn, Narnaul.

A bare perusal of impugned order shows that respondent No. 1 filed an application for leading secondary evidence qua alleged agreement to sell dated 22.04.2013 effected between him and petitioner. A suit was filed by respondent No. 1 seeking the relief of permanent injunction. The agreement dated 22.04.2013 of which photocopy is placed on record was executed between the parties. On 11.06.2013, it was conveyed to respondent No. 1 that original agreement to sell dated 22.04.2013 is required for obtaining NOC from the concerned department. The same was supplied to respondent No. 2 and is in his possession, who is refusing to return to respondent and that is why the agreement to sell dated 22.04.2013 needs to be proved by leading secondary evidence as original is not in the possession of respondent No. 1.

The application for leading secondary evidence was allowed as the fact that whether the said document is a false and fabricated document

can be ascertained only after adducing evidence to that effect. Further respondent No. 1 has followed the compliance of Section 66 of the Indian Evidence Act as the notice of the present application itself is the notice to produce the original before the Court. The respondents have received the notice of the application but have disputed the same in their possession for obvious reasons.

Thus, the application of respondent No. 1 has rightly been allowed as the claim of loss was required to be proved at the final stage of the trial and not at the initial stage of the trial.

The judgment cited by learned counsel for the petitioner i.e ***Bank of India v. M/s Allibhoy Mohammad and others, 2008(5) BCR 847*** will be applicable at the final stage of the trial and not at the initial stage of allowing an application for leading secondary evidence.

The petition stands dismissed.

August 31, 2017

G Arora

(***RITU BAHRI***)

JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No