

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-6425-2017

Date of Decision:- 20.09.2017

Gurmail Singh

.....Petitioner

Versus

Jeet Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.P. Soi, Advocate,
for the petitioner.

RITU BAHRI, J. (Oral)

Present revision petition under Article 227 of the Constitution of India for setting aside the order dated 25.07.2017, passed by learned Civil Judge (Jr. Division), Nakodar, whereby application under Section 65 of The Evidence Act, for permission to prove the photostat copy of the agreement dated 25.06.2014, by way of secondary evidence, has been allowed.

As is evident from the record that learned Civil Judge (Jr. Division), Nakodar, after taking into consideration the facts and all the contentions pertaining to appreciation of evidence, has allowed the application, filed by respondent/plaintiff, by virtue of order dated

25.07.2017, which in substance is as under: -

“Arguments of both the parties have been heard and file has been carefully perused. An application is filed by counsel for plaintiff under section 65 of Indian Evidence Act seeking permission to prove agreement to sell dated 25.06.2014 by way of secondary evidence. In this case, main objections raised by counsel for defendants are that firstly loss of the document and its existence is not proved and secondly that photostat copy of document is neither primary nor secondary evidence, so plaintiff cannot be permitted to lead secondary evidence on the basis of this document.

It was held by Hon'ble Punjab and Haryana High Court in case titled as 'Sudha Rani and others vs Uday Singh and others' 2016(3) Civil Cases Court (P&H) 423 that grounds mentioned in the application for leading secondary evidence are to be tested in the cross-examination only and the Court cannot pre judge whether those grounds are correct or not even before conclusion of trial. From this judgment it becomes crystal clear that this Court is not supposed to go into the question that whether document has been lost or not as opposite counsel will have ample opportunity to cross-examine the witness on this aspect. Even otherwise plaintiff will be permitted to lead secondary evidence subject to proof of existence, execution and loss of the original document. Thus, this application cannot be dismissed on the ground that loss of original document or the existence of original is not proved.

Counsel for defendants also argued that photocopy is not admissible as secondary evidence so this application is liable to dismissed. It is held by Hon'ble Punjab and Haryana High Court in case titled as 'Prem Lata and others vs Dharamveer Singh and others' 2014(2) Civil cases Court (P&H) 658 that photocopy is admissible as secondary evidence having been prepared by mechanical process when party seeking to produce the photostat copy as secondary evidence depicts that it is correct copy of the original document. Thus, this argument of counsel for defendants is demolished by this judgment, which clearly provides that photostat copy is admissible as secondary evidence subject to proof that it is correct copy of the original document. Accordingly, this Court is of the considered view that application filed by plaintiff has merit. Thus, this application is hereby allowed and plaintiff is directed to lead secondary evidence regarding original agreement to sell dated 25.06.2014 subject to proof of its existence, execution and loss. Plaintiff is directed to lead secondary evidence on the

next date of hearing i.e. 11.08.2017”

After hearing the learned counsel for the petitioner, going through the above-said judgment, this Court of the considered view that learned learned Civil Judge (Jr. Division), Nakodar appears to have examined the matter in the right perspective and allowed the application. Moreover, learned counsel for the petitioner did not point out any legal infirmity or illegality in the impugned order, so as to interfere, in exercise of revisional jurisdiction of this Court under Article 227 of the Constitution of India.

Since there is no merit in the present revision petition, therefore, the same is hereby dismissed as such.

September 20, 2017
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No