

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

CR No.7496 of 2017
Date of decision : 06.11.2017

Birbal ...Petitioner

Versus

Kuldeep ...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harish Nain, Advocate for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

The defendant-petitioner is in revision petition against the order dated 07.09.2017 passed by the Additional Civil Judge (Senior Division), Narwana, granting the permission to the plaintiff to produce photocopy of the agreement to sell dated 30.09.2015 by way of secondary evidence.

Learned counsel for the petitioner has submitted that the examination-in-chief of the plaintiff was recorded on 15.12.2016. However, the agreement was not produced.

A reading of the application for permission to lead secondary evidence shows that the plaintiff has asserted to the following effect:-

“3. That the previous date of hearing was filed for 7.1.2017 and as per the instructions of plaintiff's counsel, the original agreement on dated 6.1.2017 was handed over by the plaintiff to his counsel Sh. J.S. Bajwa Advocate Narwana which was kept in the breaaf of case on the same day afternoon in the chamber but next morning on dated 7.1.2017 when plaintiff's counsel check the breaaf to produce the original agreement in court, then said original

agreement was found missing and after that a rapat regarding missing/lost of original agreement was entered in PS City Narwana. The copy of report is attached.”

A reading of the aforesaid would show that the loss of the document had been asserted from the brief of the counsel of the plaintiff after 15.12.2016.

Learned Court after appreciating the facts available on the file and after noticing that this agreement to sell is pleaded in the plaint and in fact, the suit for specific performance of the agreement to sell is entirely based on this agreement, allowed the application.

Learned counsel for the petitioner has submitted that the respondent-plaintiff should have produce this agreement to sell in the examination-in-chief.

I have considered the submission. In the present case, the Court has exercised the discretion and allowed the application for permission to lead secondary evidence. It has been specifically pleaded that the agreement to sell has been lost from the brief of the counsel.

Taking into consideration the aforesaid fact, this Court does not find any good ground to interfere with the discretion exercised by the trial Court.

Revision petition is dismissed.

06.11.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No