

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

**Civil Revision No.8394 of 2017 (O&M)
Date of Decision:12.12.2017**

Prem Nath Gupta and another

.....Petitioners

Vs

Ramesh Kumar and others

....Respondents

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

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

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 14.11.2017 passed by the Civil Judge (Jr. Divn.) Narnaul vide which application filed by the plaintiff/respondent No.1 for leading secondary evidence was allowed.

[2]. Brief facts are that vide application for leading secondary evidence *qua* letters dated 17.07.2008 and 13.08.2008 issued by Nizam Institute of Medical Science in respect of medical record dated 10.02.1993 and 14.08.1991 of Rambilas (father of defendant No.1) was sought to be adduced. The suit was filed by the plaintiff seeking relief of specific performance and challenging the sale deed executed at a

subsequent stage. The application for leading secondary evidence was allowed by the civil Court wherein the civil Court granted permission to the plaintiff to produce certain GPAs and prove the medical record of Rambilas. PW-21 Clerk of Nizam Institute of Medical Science, Hyderabad appeared in the case, but could not bring the summoned record of treatment as the same was stated to be more than 10 years old and was destroyed as per instructions of the competent authority. The plaintiff sought to prove the letters dated 17.07.2008 and 13.08.2008 wherein the period of treatment of Rambilas was mentioned.

[3]. As per testimony of PW-11 to PW-21 the existence of the documents was not denied, rather it was submitted that the witness could not bring the same as the same was destroyed as per instructions of the competent authority.

[4]. Learned counsel for the petitioners vehemently submitted that since the record has been destroyed, therefore, the existence of record cannot be presumed.

[5]. I have heard the submissions made by learned counsel for the petitioners.

[6]. It is a settled position of law that mere exhibition of document does not dispense with proof of execution. The

proceedings in terms of Section 65 of the Evidence Act are in the form of enquiry. The application can be allowed subject to proof of existence and loss of the document at a later stage. Leading of secondary evidence is like an enquiry for proving existence of a document or loss thereof. Granting leave to lead secondary evidence does not mean that the document has been admitted in evidence, nor it will provide a finding in respect of existence of any condition incorporated in Section 65 of the Evidence Act.

[7]. At the most, it amounts to holding an enquiry regarding existence of a document and its loss in certain conditions. Failure or success to prove the existence of such document or loss thereof cannot be pre-determined and without providing any opportunity to the parties. It would be proved with reference to evidence to be led by the parties and thereafter the Court will decide admissibility, relevancy and validity of the document at a relevant stage.

[8]. At this stage, the document can be exhibited with an endorsement of objection. The secondary evidence as a general rule is admissible in the absence of preliminary evidence. If the original itself is found to be inadmissible, then the parties relying upon the same is not entitled to by way of leading secondary evidence. At this stage, no such finding can

be recorded as the defendants are in the process of leading evidence. The practice of holding up the trial at this juncture in order to prove the admissibility of a document would be an '*archaic practice*' which is deprecated by the Courts on number of occasions.

[9]. In view of aforesaid legal position, the indulgence granted by the trial Court cannot be faulted with. However, the exhibition of document with an endorsement of objection would be decided by the trial Court in accordance with law and the validity and admissibility of the document would be tested at the threshold of evidence to be led by the parties. The secondary evidence has been allowed, subject to proof of existence and loss of the document.

[10]. In view of above, there is no error of jurisdiction in the impugned order dated 14.11.2017 passed by the Civil Judge (Jr. Divn.) Narnual. The revision petition is accordingly dismissed.

December 12, 2017

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No