

Civil Revision No.986 of 2017 (O&M)

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

Sr. No.110

**Civil Revision No.986 of 2017 (O&M)
DECIDED ON: February 27, 2017**

AMAR LAL

..PETITIONER

VERSUS

SANJEEV ARORA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Arnav Kumar Sood, Advocate,
for the petitioner.

JASPAL SINGH, J.

CM No.3287-CII of 2017

Application is allowed as prayed for.

Notice dated 26.07.2008 (Annexure P-4) is taken on record
subject to all just exceptions and be tagged at appropriate place.

CR No.986 of 2017

Through the instant revision petition preferred under Article
227 of the Constitution of India, petitioner has sought the quashing/setting

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aside of impugned order dated December 02, 2016, passed by learned Civil Judge (Jr. Divn.), Ludhiana, whereby an application for permission to lead secondary evidence in respect of receipt dated December 10, 2005 of ₹3,50,000/- and receipt dated December 27, 2005 of ₹2,00,000/- qua advance for QICAI Branch Computerized Embroidery Machine has been declined.

2. The contention of learned counsel for the petitioner is that the original receipts dated December 10, 2005 and December 27, 2005 were taken into possession by the Investigating Officer in case pertaining to FIR No.154, dated August 19, 2007, under Section 420 IPC, registered with Police Station Salem Tabri, District Ludhiana on April 06, 2008 along with original cheque of ₹1,50,000/- issued by the respondent/defendant drawn on ING Vasya Bank Ltd. dated February 17, 2007. The aforesaid cheque on presentation in the bank for encashment was dishonoured and returned along with its memo. During the trial of the aforesaid case, the above referred documents were not found available in the concerned judicial file pertaining to challan under Section 173 Cr.P.C. of the said FIR. The petitioner is in possession of the photocopies of the aforesaid receipts, which are sought to be proved by way of secondary evidence, but the learned trial court has declined the application without any cogent or convincing reason. The production and proof of the aforesaid receipts are essential for the proper adjudication of the matter in controversy. Otherwise, the petitioner is likely to be greatly prejudiced.

3. This court has given a thoughtful consideration to the aforesaid submissions made by learned counsel for the petitioner and perused the

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records available on file.

4. Undoubtedly, the receipt dated December 10, 2005 of ₹3,50,000/- and receipt dated December 27, 2005 of ₹2,00,000/- qua advance for QICAI Branch Computerized Embroidery Machine were taken into possession by the Investigating Officer in case bearing FIR No.154, dated August 19, 2007, under Section 420 IPC, registered with Police Station Salem Tabri, District Ludhiana on April 06, 2008. There is a simple assertion of the petitioner that the said documents are not available on the concerned judicial file. But, there is nothing on record to suggest as to whether the petitioner has already inspected that file in order to determine the availability of those documents. In fact, prior moving of the instant application seeking permission to adduce secondary evidence in respect of above referred receipts, he should have made a request to the court concerned to summon the judicial file pertaining to above referred FIR as well as examine the Investigating Officer. But, instead of making such a request, an application has been moved. Until and unless, the loss of the document is prima facie proved, the permission for secondary evidence cannot be granted. Thus, this court does not find any merit in the instant petition at this stage.

5. Accordingly, instant petition stands dismissed.

6. However, the petitioner is advised to move an appropriate application before the learned trial court to summon the judicial file as well as that of police file (if, so required) pertaining to FIR No.154, dated August 19, 2007, under Section 420 IPC, Police Station Salem Tabri, District Ludhiana and in case, the aforesaid documents are not available on the file

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then to seek permission to prove the same by way of secondary evidence. In fact, an application moved by the petitioner can be said to be a premature and has been rightly dismissed by the learned trial court.

February 27, 2017

Ankur

(JASPAL SINGH)

JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No