

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

(110)

CR No.1915 of 2018 (O&M)

Date of Decision:27.03.2018

Naresh Puri

.....Petitioner

Vs.

Ashwani Kumar

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. K.S. Gill, Advocate for the petitioner.

RAMENDRA JAIN, J. (Oral)

Through this petition filed under Article 227 of the Constitution of India, challenge has been laid to the order dated 22.02.2018 (Annexure P.1) of the trial Court, whereby application of the petitioner under Section 65 of the Indian Evidence Act to lead secondary evidence was dismissed.

Learned counsel relying upon Sections 35 and 36 of the Stamp Act, inter-alia contends that the trial Court has wrongly and illegally dismissed the application of the petitioner for permitting him to prove agreement in question by way of secondary evidence without appreciating the fact that proviso of Section 35 permits the admissibility of an instrument even though it is insufficiently stamped on payment of the amount required to make good the deficiency together with the penalty of ₹5/- or ten times the amount of proper duty or deficient portion thereof exceeding ₹5, of a sum equal to ten times such duty or portion. The trial Court has also erred in not permitting the petitioner to prove the agreement in question by way of secondary evidence, despite the fact that no such objection was raised by the opposite side.

Considering overall facts and circumstances of the case and proviso of Section 35 of the Stamp Act, the impugned order is set aside inasmuch as the trial Court has failed to look into the same. Consequently, the petitioner is directed to prove agreement in question (Annexure P.2) by way of leading secondary evidence.

This order has been passed without issuing notice to the respondent- defendant with a view to impart justice expeditiously to the parties and to save the huge expenses which may be incurred by him and also to avoid unnecessary delay in the adjudication of the matter. Still, if dissatisfied, the respondent may move this Court for recalling this order within a period of six weeks from today.

March 27, 2018
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(RAMENDRA JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No