

108.

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

CIVIL REVISION-2556-2018

Date of decision:21.04.2018.

HARYANA STATE INDUSTRIAL INFRASTRUCTURE
DEVELOPMENT & ANR

... Petitioners

Versus

ALLIED ELECTRICAL IND. AND ANR

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. D.K. Singal, Advocate,
for the petitioners.

HARI PAL VERMA, J.(Oral)

Petitioners have filed the present revision petition under Article 227 of the Constitution of India impugning the order dated 04.12.2017 (Annexure P-6) passed by learned Civil Judge (Junior Division), Sonapat whereby the application filed by the respondent-plaintiff for leading secondary evidence, as provided under Section 65 of the Indian Evidence Act (for short, 'the Act'), was allowed.

Learned counsel for the petitioners states that the documents sought to be led in secondary evidence are not in existence and, therefore, the application filed by the respondent-plaintiff under Section 65 of the Act is liable to be dismissed. He further states that once the documents are not in existence, secondary evidence of such like documents cannot be led into evidence. The relevant order passed by the Civil Court reads as under:-

“5. Secondary evidence, as a general rule is admissible only in the absence of primary evidence. Section 65, however, permits secondary evidence to be given of the

existence, condition or contents of documents under the circumstances mentioned therein. The conditions laid down in section must be fulfilled before secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in the section. Since the respondents have disputed the fact/existence of the documents sought to be produced by way of secondary evidence, but at the same time they have not ruled out the possibility of preparing those documents with the help of any of the employee/s of the company, therefore, it shall be justified in the factual matrix of the case to allow the application, however, subject to compliance of Section 65 of the Evidence Act. In view of the observation made therein above, application stands allowed. Application stands allowed. Adjourned to 15.12.2017 for leading secondary evidence.”

Having heard learned counsel for the petitioners and perusing the order, this Court finds that in order to lead secondary evidence of documents sought to be led in evidence, respondent-plaintiff is required to fulfill the conditions as provided under Section 65 of the Act. Respondent-plaintiff is required to prove the existence and loss of the documents sought to be led in secondary evidence.

With the above observations, present petition stands disposed of.

(HARI PAL VERMA)
JUDGE

21.04.2018
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No