

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

**CR No.4901 of 2018 (O&M)
Date of Decision:05.09.2018**

Gurjaj Singh and another

.....Petitioners

Vs

M/s Narinder Mohan Aggarwal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. P.K.Bansal, Advocate
for the petitioners.

RAJ MOHAN SINGH, J. (Oral)

Petitioners have assailed the order dated 9.5.2018 passed by the Civil Judge (Jr. Division), Ferozepur, whereby application under Section 65 of the Indian Evidence Act for leading secondary evidence in respect of photocopy of receipt dated 6.9.2014 was allowed.

Case set up by the plaintiff was that the amount of ₹ 9,52,000/-was paid to defendants No.3 and 4, who in turn, executed the receipt dated 6.9.2014 in favour of the plaintiff in the presence of marginal witnesses. The original receipt was stolen by defendants No.3 and 4 and report to that effect was lodged in Police Station Kulgari.

Plaintiff filed an application under Section 65 of the

Indian Evidence Act for leading secondary evidence in the context of receipt by means of producing photocopy of the same. The photocopy of receipt was denied by the defendants being forged and fabricated. The said application was allowed by the trial Court vide impugned order dated 9.5.2018 and that is how the present revision petition came to be filed before this Court.

I have considered the arguments raised by learned counsel for the petitioners.

In **Bipin Shantilal Panchal Vs. State of Gujarat,** **2001(1) RCR (Criminal) 859**, the Hon'ble Apex Court laid down that the procedure has been set for receiving the documents when the same is objected to during trial. The Hon'ble Apex Court has castigated the practice of holding up trial on objections taken at the time of tendering documents in evidence. At that stage, asking the Court to pass an appropriate order on objections has been categorized as an 'archaic practice'.

The leading of evidence at such a stage would not crystallize any substantial right in favour of the defendants, rather the evidence led by the plaintiff would be tested at the threshold of admissibility, validity and genuineness of the document in terms of execution and its nature at a later stage. Later stage would be an appropriate stage for lawful consideration of such a criteria i.e. of validity, admissibility and

genuineness of the document. Even though there is no provision for de-exhibiting the document at a later stage, still the Court can eschew the evidence in case the document does not qualify the aforesaid ingredients. The attempt of the party for production and exhibition of the document cannot be thrown at the threshold of technicality. The view expressed in **Dr. S.P. Arora Vs. Satbir Singh, 2010(5) RCR (Civil) 350** and **Simar Pal Singh Vs. Hakam Singh, 2009(14) RCR (Civil) 273** can be relied in the aforesaid context.

The arguments raised by learned counsel for the petitioner would be adequately answered by the trial Court at the time of consideration of the issue on merits. In **U. Sree Vs. U. Srinivas, 2013 (1) RCR (Civil) 883**, the Hon'ble Apex Court has commented that to permit secondary evidence which has been destroyed by the person in whose possession it was and whose it created an enforceable legal right or an obligation, is normally not to be allowed as secondary evidence. The secondary evidence of such a nature may be tempered with or changed and it would be against public policy to take chance of running the risk of fraud being committed.

Such situation is not involved in the present case, rather the document, which is claimed to be the subject matter of theft, will be proved by the plaintiff in accordance with law.

The relevant witnesses can be examined at a later stage. In

case, execution of such document is not proved in accordance with law, the Court would be at liberty to eschew such evidence. At this stage of litigation curtailing the right of the plaintiff would not be in consonance with the settled principle of law.

For the reasons recorded here-in-above, I do not find any error of jurisdiction in the impugned order passed by the trial Court.

Accordingly, this revision petition is dismissed.

September 05, 2018
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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No