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

CR No. 6287 of 2018
Date of Decision: 27.11.2018

Amar Kaur

-Petitioner

Vs

Baldev Singh

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Lalit Pathak, Advocate,
for the petitioner.

Mr. Arjun Veer Sharma, Advocate,
for the respondent.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has challenged the order dated 14.08.2018 passed by Civil Judge (Junior Division), Ludhiana whereby application for leading secondary evidence by the plaintiff was allowed.

Plaintiff sought to lead secondary evidence in respect of rent note dated 24.12.2014 by claiming that the same is in possession of defendant No.2. The application was filed for directing the defendant No.2 to produce the original rent note but the defendants have denied the same. Failure on the part of the defendants to produce the original rent note entailed in filing application for leading secondary evidence.

Defendants have denied the possession of rent note on the premise that the same is in possession of the plaintiff. Fact remains that in view of stand taken by both the parties, plaintiff cannot lead his primary evidence in respect of rent note.

Learned counsel for the petitioner relies upon **Ram Karan Khichar vs Mangal Deep Cooperative House Building Society Ltd. Hisar and others, 2016(1) PLR 509** and contended that existence and loss of the document are two important events which are required to be proved by the plaintiff by leading secondary evidence. Photocopy cannot be permitted to be produced on record by way of secondary evidence, once the agreement has not been found to be in existence. In the said case, agreement was not pleaded in the written statement and secondary evidence was sought to be led in respect thereof. In the facts and circumstances of the case, the Co-ordinate Bench held that secondary evidence cannot be permitted to be led.

In **Bipin Shantilal Panchal Vs. State of Gujarat, 2001 (1) RCR (Criminal) 859**, the Hon'ble Apex Court has 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'.

Leading of evidence at the stage pursuant to passing of order would not crystallize any substantial right in favour of the defendants, rather the evidence led by the parties would be tested at the threshold of admissibility, validity and genuineness of the document in terms of its execution and its nature at a later stage. Later stage would be an appropriate stage for lawful consideration of such a criteria in terms of validity, admissibility and genuineness of the document.

In **Ashok Kumar Sachdeva vs Harish Malik, 2007**

(4) RCR (Civil) 311, this Court held that the party should be granted leave to lead secondary evidence. Whether the party ultimately succeeds in proving the document or not is a question of fact and the same depends upon evidence of the parties. To grant leave to lead secondary evidence does not mean that the document is admitted in evidence nor it is a finding of existence of any of the conditions indicated under Section 65 of Evidence Act. It only amounts to holding an inquiry regarding existence of document and its loss under some circumstances. Failure or success of proving existence of document or its loss cannot be pre-determined that too without providing opportunity. Whether it

is proved or not, is to be seen after the leave is granted and the material produced is evaluated by the Court.

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, it was held that the offer of secondary evidence can be at best impeached in cross-examination. It is for the Court to examine and decide whether it is appropriate to rely on such secondary evidence or not for want of compliance of Section 65 of the Evidence Act.

In case the Court finds the secondary evidence legally not reliable, the Court would be at liberty to eschew the same. However, the attempt of a party for production or to exhibit the document cannot be thrown at this threshold.

For the reasons recorded in the aforementioned precedents, I do not find any error of jurisdiction committed by the trial Court while allowing the application for leading secondary evidence.

This revision petition is found to be totally devoid of merits and the same is accordingly, dismissed.

27.11.2018
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No