

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 91 of 2019**

- Pukesh Chandrakar S/o Late Shri Dileshwar Chandrakar Aged About 35 Years R/o Village Anda, P. S. Anda, Tahsil And District Durg, Chhattisgarh.Defendant No. 1

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Collector Durg, District Durg, Chhattisgarh
2. Rahul Patni S/o Shri Inderchand Patni Aged About 39 Years R/o Jain Gali, Sadar Bazar Durg, Tahsil And District Durg, Chhattisgarh.Plaintiff.
3. Axix Bank Pvt. Ltd. Through Branch Manager, Jeevan Plaza Commercial Complex, G. E. Road, Ganjpara, Durg, Tahsil And District Durg, Chhattisgarh.Defendant No. 3

---- Respondents

For Petitioner : Shri Mayank Chandrakar, Advocate

For Respondent No.2 : Shri P.R. Patankar, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****27/03/2019**

1. Heard.
2. The petitioner's/defendant's application to lead secondary evidence was rejected by unreasoned order dated 06.09.2018, which was set aside by this Court in WP (227) No.889/2018 on 11.10.2018, and this Court directed the trial Court to decide the application afresh after hearing the parties. This time again the trial Court rejected the application holding that there is delay in filing the

application and even went to the extent that its earlier order dated 06.09.2018 which has already been set aside by this Court is correct. Against this order this writ petition has been preferred.

3. Shri Mayank Chandrakar, learned counsel for the petitioner would submit that the impugned order is not sustainable and is bad in law.
4. I have heard learned counsel for the parties and considered their rival submissions made herein above and went through the record with utmost circumspection.
5. The trial Court ought to have considered the application on merits and should have passed the reasoned speaking order as directed earlier in this regard. The decision of the Supreme Court in the case of ***Rakesh Mohindra Versus Anita Beri and others {(2016) 16 SCC 483}*** qua the leading secondary evidence has held as under:-

“20. It is well settled that if a party wishes to lead secondary evidence, the Court is obliged to examine the probative value of the document produced in the Court or their contents and decide the question of admissibility of a document in secondary evidence. At the same time, the party has to lay down the factual foundation to establish the right to give secondary evidence where the original document cannot be produced. It is equally well settled that neither mere admission of a document in evidence amounts to its proof nor mere making of an exhibit of a document dispense with its proof, which is otherwise required to be done in accordance with law.

21. In the case of [M. Chandra vs. M. Thangamuthu](#), (2010) 9 SCC 712, this Court considered the requirement of [Section 65](#) of the Evidence Act and held as under:-

“47. We do not agree with the reasoning of the High Court. It is true that a party who wishes to rely upon the contents of a document must adduce primary evidence of the contents,

and only in the exceptional cases will secondary evidence be admissible. However, if secondary evidence is admissible, it may be adduced in any form in which it may be available, whether by production of a copy, duplicate copy of a copy, by oral evidence of the contents or in another form. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. It should be emphasised that the exceptions to the rule requiring primary evidence are designed to provide relief in a case where a party is genuinely unable to produce the original through no fault of that party.”

24. However, we make it clear that mere admission of secondary evidence does not amount to its proof. The genuineness, correctness and existence of the document shall have to be established during the trial and the trial court shall record the reasons before relying on those secondary evidences.”

6. In view of the above stated legal position once again the trial Court is directed to consider the need of leading secondary evidence on its own merit in accordance with law in view of the decision rendered by the Supreme Court in ***Rakesh Mohindra (supra)***, after hearing the parties. The impugned order dated 26.11.2018 is accordingly set aside. In this case, it is appropriate to mention that the trial Court has held that its order dated 06.09.2018, which has been set aside is legal and proper, which cannot be appreciated.
7. With such observation the petition stands disposed of. A copy of this order be sent to the trial Court through the Registrar General by E-mail/Fax.

Sd/-

Sanjay K. Agrawal
Judge

Ashu