

**251**

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

**Civil Revision No.3137 of 2018  
Date of Decision: 29.04.2019**

**The Co-operative Society, Village Uplana  
.....Petitioner**

**Vs**

**Suresh Kumar and others  
....Respondents**

**CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. S.K. Rana, Advocate  
for the petitioner.

Mr. John Kumar, Advocate  
for the respondents.

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**RAJ MOHAN SINGH, J.**

[1]. Petitioner-Society has preferred this revision petition against the order dated 22.02.2018 passed by the Civil Judge (Jr. Divn.) Assandh (Karnal) vide which the application under Section 65 of the Evidence Act for leading secondary evidence was dismissed.

[2]. Photocopy of the report of estimate of cost of dismantling the building was sought to be produced by way of secondary evidence by the defendant/petitioner. It was contended that the application to the higher authority was filed

on 22.04.2015 for permission to auction the building of sale point of village Uplana. Harpreet Singh, Junior Engineer was appointed to conduct assessment regarding cost of material. Harpreet Singh, Junior Engineer visited the spot and prepared the report of dismantling the building of the Society. The original report was submitted to the Society/defendant and the Society in turn sent the same to the higher authority. Photocopy of the report was retained in the office. Original report could not be located/traced out as the same was lost. On the basis of photocopy retained by the defendant, the application for leading secondary evidence was filed.

[3]. The trial has reached the stage of final arguments. Perusal of the impugned order would show that the application was dismissed primarily on the ground that the defendant has not proved the alleged loss of original report of Harpreet Singh, J.E., nor it has produced any witness from the higher authority to whom alleged original report was sent.

[4]. Learned counsel for the petitioner submitted that the examinations of DW-1 to DW-3 would satisfy the ingredients of alleged existence and loss of the original document and the same would be under the domain of the trial Court to assess veracity of the statements of DW-1 Surjit Kumar, DW-2 Naresh and DW-3 Harpreet Singh, J.E. The application could have been

allowed subject to existence and loss of the document and the Court was not obliged to assess the evidence at that stage.

[5]. On the other hand, learned counsel for the respondents by relying upon **Banarsi Dass vs. Om Parkash and others, 2005(2) R.C.R. (Civil) 72; Namburu Bulli Veera Bhanra Prasad & Ors. vs. Vegi Venkata Satyanarayana (died) & Ors., 1998(2) CivCC 209 (AP)** and **Mangat Ram vs. Prabhu Dayal and others, 2002(4) R.C.R. (Civil) 706** contended that existence and loss of the document are *sine qua non* conditions and the petitioner must prove the existence and loss of the document at the stage of filing of the application. Proper foundation has to be laid for leading secondary evidence and that is the essential condition for permitting leading of secondary evidence. The party leading secondary evidence must lay a proper foundation and prove existence of the document and loss thereof. Once the document is lost, the applicant must show that how its photocopy was procured. Failure to prove as to how the copy of the original came in the hands of the petitioner would lead to dismissal of the application.

[6]. I have considered the submissions made by learned counsel for the parties.

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

down the procedure 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 this stage, directing the Court to pass an appropriate order on the objections has been categorized as an '*archaic practice*'.

[8]. The leading of evidence at the stage pursuant to the passing of the impugned order would not crystallize any substantial right in favour of the parties, 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 nature at a later stage. That stage would be an appropriate stage for lawful consideration of the aforesaid criteria in terms of validity, admissibility and genuineness of the document. Though there is no provision in law for de-exhibiting the document already exhibited in evidence, but the exhibition of a document, did not prove, the Court would be at liberty to eschew the same. In the event of proving due execution of the document, the Court can rely upon the same in accordance with law. Secondary evidence as a general rule is not admissible, but only in the absence of primary evidence. The offer of secondary evidence can be best impeached in cross-examination of the witness. It will be for the Court to examine and decide as to

whether, it will be appropriate to rely upon such secondary evidence or not for want of compliance of Section 65 of the Evidence Act. In case the Court finds the secondary evidence not tenable, the Court would be at liberty to eschew the same. However, the attempt of a party for production and to exhibit the document cannot be thrown at this threshold. The views 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 contention of both the parties would be adequately answered by the Court at the time of consideration of issue on merits.

[9]. The precedents cited by learned counsel for the respondents will not advance the case of the respondents in any manner as the impugned order is suggestive of the fact that the Court has considered the admissibility of the documents before examination of DW-3.

[10]. Since the witnesses have been cross-examined, the application in question can be considered subject to existence and loss of the documents in accordance with law. The trial Court would be at liberty to assess the admissibility, veracity and genuineness of the document in question on the basis of available evidence on record and thereafter the Court would be at liberty to pass appropriate order in accordance with law.

Permitting 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, but the trial Court would be at liberty to consider the aforesaid point as well. The secondary evidence of tampered document would be against public policy and taking chance of running the risk of fraud being committed.

[11]. The trial Court would be obligated to see all the aforesaid pros and cons of the situation while assessing the veracity of evidence led by the defendant on record. Since the defendant has concluded its evidence, therefore, at this stage without meaning anything on the merits of the case, it would be just and appropriate to direct the trial Court to pass a fresh order on the application under Section 65 of the Evidence Act in view of the aforesaid observations. Consequently, the impugned order dated 22.02.2018 passed by the Civil Judge (Jr. Divn.) Assandh (Karnal) is set aside. This revision petition is disposed of.

April 29, 2019

*Atik*

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)**  
**JUDGE**

Yes/No

Yes/No