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

CR-5415-2016 (O&M)

Date of decision : 16.01.2019

Surinder Kumar

... Petitioner

Versus

Karnail Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Manvinder Singh Dalal, Advocate
for the petitioner.

Mr. J.P. Dhull, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order, whereby the application (Annexure P-4) of the respondent No.1-plaintiff claiming two fold relief of production of the lease deed dated 10.08.2009 and in the alternative, to lead secondary evidence at the stage of plaintiff's evidence, has been allowed.

Learned counsel for the petitioner-defendant submitted that the respondent No.1-plaintiff, vide Annexure P-1, instituted the suit for possession and mense profits alleging him to be a licensee on various terms and conditions, but the original copy of the lease deed, much less, photocopy as per the provisions of Order 13 Rule 1 of the Code of Civil Procedure, was not attached. The application is also bereft of the date of loss and therefore, the Court below ought not to have allowed the

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application in a blanket manner and without even ordering for existence and loss.

Per contra, learned counsel appearing on behalf of the respondents submitted that the factum of loss and existence would have been proved in view of the impugned order, but his client is not averse, in case, the permission of the existence and loss is granted, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Dalal, for, the entire pith and substance of the plaint read out during the course of hearing as well as on perusal of the same, vide Annexure P-4, it is nowhere mentioned that the photocopy of the lease deed was attached. The provisions of Order 13 Rule 1 of CPC, were amended vide amendment dated 01.07.2002. The plaintiff did not comply with the amended provisions by attaching the original documents i.e. document of reliance.

It would be in the fitness of things to extract the contents of the application dated 25.08.2015 (Annexure P-4), which reads as under:-

- "1. That the above titled cases is fixed for today for P.Ws.*
- 2. That the original agreement dated 10.08.2009 is in possession of defendant no.1 which is very important document for leading the evidence on file.*
- 3. That the defendant no.1 should produce the above said original agreement dated 10.08.2009 for proper and just decision of the case.*

It is, therefore, prayed that defendant No.1 may kindly be directed to produce the original agreement dated 10.08.2009 on the case file alternatively the plaintiff may be allowed to lead secondary evidence in the interest of justice."

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From the tenor and mode of the application, no date of loss has been mentioned, much less, any DDR. Such a frivolous application is bereft of requirement of Section 65 of the Indian Evidence Act could not have been entertained by the trial Court by passing the impugned order, thus, the impugned order, under challenge, is without jurisdiction, much less, erroneous. The same is hereby set aside and the revision petition stands allowed.

16.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**