

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

CR No.2504 of 2019 (O&M)

Date of decision: 12.04.2019

Ashok Kumar

...Petitioner

Versus

Dinesh Mittal and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sanjeev Sharma, Advocate
for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 06.03.2019 passed by the Rent Controller, Khanna whereby application filed by the petitioner (respondent therein) seeking permission to prove the documents i.e. compromise dated 27.09.2002, 10.06.2005 and application dated 17.09.2005 by way of secondary evidence, has been dismissed.

Counsel for the petitioner would argue that in para 5 of preliminary objections as well as reply on merits, the petitioner has raised a categoric plea with regard to compromise dated 10.06.2005 and a copy of the said compromise was appended with the reply/written statement. It is further argued that as the respondent and his family members started harassing the petitioner despite compromise dated 10.06.2005, he was constrained to file application bearing No.1959 dated 17.09.2005 against the respondent and his family members. The petitioner applied for certified

copies of application dated 17.09.2005 along with other documents under the Right to Information Act, 2005 and in response thereto, he received letter No.283 dated 11.02.2017 intimating that record of aforesaid application has been destroyed. It is further argued that the documents in question are relevant and material for deciding controversy involved in the eviction application filed by the respondents, thus, a serious prejudice shall be caused to the petitioner in case the impugned order is not set aside and he is not permitted to prove the aforesaid documents by way of secondary evidence. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Rakesh Mohindra Vs. Anita Beri and others, 2015(4) RCR (Civil) 1023**. Further reference has been made to judgment of this Court **Sudha Rani and others Vs. Udai Singh and others, 2016(3) PLR 277**.

I have heard counsel for the petitioner, perused the paper book and copies of various documents made available during course of hearing and judgments cited at bar.

Before advertng to the submissions made by counsel for the petitioner, it is appropriate to note that the Rent Controller dismissed the prayer for proving documents i.e. compromise dated 27.09.2002 and application dated 17.09.2005 with the observations that these documents have not been pleaded by the petitioner in reply to the main petition and permitting him to prove these documents by way of secondary evidence would amount to allowing evidence beyond pleadings. With regard to the

document dated 10.06.2005, it has been held that it is not plea of the petitioner as to where the original of said document is, whether the original has been lost or destroyed or what happened to the original document.

Perusal of the written reply dated 23.12.2013 filed by the petitioner to the eviction application would reveal that there is no reference either to compromise dated 27.09.2002 or application dated 17.09.2005 sought to be proved by way of secondary evidence. Counsel for the petitioner has failed to advance any arguments much less meaningful and convincing that if the petitioner cannot be permitted to adduce evidence with regard to originals of compromise dated 27.09.2002 and application dated 17.09.2005 being beyond pleadings, how can he be permitted to prove these documents by way of secondary evidence. In this view of the matter, I do not find an error much less illegality in the impugned order rejecting prayer of the petitioner for permitting to prove the aforesaid two documents by way of secondary evidence.

This brings the Court to the document dated 10.06.2005, compromise purported to be effected between the parties. No doubt, in preliminary objection as well as reply on merits, there is reference to compromise effected on 10.06.2005. In sub para (b) of para 5 on merits, an averment has been made that photocopy of compromise dated 10.06.2005 is attached. In the application seeking permission to lead secondary evidence qua compromise dated 10.06.2005, there is no reference as to why the original document cannot be produced on record and the circumstances

under which the petitioner can be permitted to prove the said document by way of secondary evidence by invoking the provisions of Section 65 of Evidence Act, 1872 that deals with cases in which secondary evidence relating to documents may be given. Counsel for the petitioner has not made reference to any of the clauses of Section 65 that can be attracted in the circumstances of the present case to permit the petitioner to prove the document dated 10.06.2005 by way of secondary evidence.

To be fair to the petitioner, counsel has sought to contend that original compromise deed dated 10.06.2005 was appended with the application dated 17.09.2005 and since in view of information received under RTI Act, 2005, record of that application has been destroyed, the petitioner has no option except to prove the document by way of secondary evidence. This contention raised by counsel for the petitioner is highly misconceived and is not borne out either from the averments raised in the instant application or from the application dated 17.09.2005 a copy whereof has been appended as Annexure P4. In the document Annexure P4 at Sr. No.1 of enclosures, there is reference to copy of compromise/mutual settlement meaning thereby that original document was not appended with the application. The Rent Controller has rightly held that the petitioner has failed to make out a case as to under what circumstances he can be permitted to prove copy of compromise deed dated 10.06.2005 by way of secondary evidence when examined in the light of contingencies envisaged in Clauses (a) to (g) of Section 65 of Evidence Act, 1872. Since the

petitioner has failed to bring his case within the purview and ambit of one or more than one of the clauses provided under Section 65 of the Evidence Act, 1872, it is difficult to accept contention of the petitioner that the order passed by the Rent Controller rejecting plea of the petitioner to prove document dated 10.06.2005 by way of secondary evidence either suffers from an error much less illegality warranting intervention in exercise of extra-ordinary jurisdiction under Article 227 of the Constitution of India.

In view of what has been discussed hereinbefore, finding no merit, the petition fails and is accordingly dismissed in limine. However, nothing stated hereinbefore shall cause prejudice to the petitioner at the time of final adjudication.

12.04.2019
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No