

CR 4724-2019 (O&M)

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

CR No. 4724-2019 (O&M)

Date of Decision: November, 28th 2019

Chunni Lal Sony

.....Petitioner

Versus

Sarwan Kumar

.....Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sumit Sangwan, Advocate
for the petitioner.

Mr. Y.D. Kaushik, Advocate for
the Respondent.

JAISHREE THAKUR, J. (ORAL)

This revision petition is filed under Article 227 of the Constitution of India seeking to challenge the order dated 8th of July, 2019, whereby application for secondary evidence as filed by the respondent stands allowed.

2. In brief, the facts are that the respondent-landlord filed an eviction petition dated 04.08.2015, primarily on the ground of non-payment of rent. Earlier too, a similar petition had been filed by the respondent-landlord seeking an eviction on the ground of personal necessity which is still pending consideration. During the pendency of eviction petition filed on the ground of non-payment of rent, the landlord filed an application seeking permission to adduce secondary evidence and prove the rent-note in which there is an agreement that house tax would be paid by the petitioner. The application for secondary evidence was contested on the ground that the petitioner had already paid the arrears of rent as claimed and that the respondent could not be permitted

to produce the rent-note as he had not relied upon the same either in his eviction petition or the petition filed seeking ejectment on the ground of personal necessity. It was also contended that the rent-note sought to be adduced is a photocopy of an attested copy and the same appears to have been recently prepared. The Rent Controller by the impugned order allowed the application and permitted the respondent to adduce secondary evidence giving an opportunity to the respondent to challenge the same.

3. Aggrieved by the impugned order dated 08.07.2019, the instant revision petition has been filed.

4. Learned counsel appearing on behalf of the petitioner contends that photocopy of a document can be allowed as evidence in case the person seeking to adduce secondary evidence has alleged and proved that there was an original in existence and the same had been lost or destroyed or in the possession of the opposite party who failed to produce it. Reliance has been placed upon the judgment rendered in *Jaspal Singh Tiwana Vs. Mohinder Singh Sandhu, 2018(1) PLR 206*, *Narender Vs. Vikram Electric Equipment Pvt. Ltd., 2017(2) PLR 729* and *Raj Kumar Vs. Bharat Bansal, 2017(1) PLR 245*.

5. Per contra, learned counsel appearing on behalf of respondent vehemently argues that there is no infirmity in the order so passed allowing secondary evidence as the petitioner herein would be given ample opportunity to cross examine the witness regarding the authenticity of the said document and lead evidence in support of the contentions that the same is not a genuine document.

6. I have heard counsel for the parties and through their assistance, have gone through the pleadings of the case and the impugned order.

7. Section 63 of the Indian Evidence Act, deals with secondary evidence which means and includes (1) certified copies given under the provisions hereinafter contained; (2) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies; (3) copies made from or compared with the original; (4) counterparts of documents as against the parties who did not execute them; (5) oral accounts of the contents of the document given by some person who has himself seen it. In the instant case, the respondent sought to adduce secondary evidence of a rent-note to establish that house tax was payable, which application has been allowed. The law in regard to leading of secondary evidence has been well settled in the judgment rendered in ***Smt. J. Yashoda Vs. Smt. K. Shobha Rani, 2007(5) SCC 730***, wherein the Hon'ble Supreme Court has held that photocopies of the original documents cannot be received as secondary evidence in terms of Section 63 of the Act, by further holding that secondary evidence as a general rule is admissible only in the absence of the primary evidence.

8. The Hon'ble Apex Court in para 9 of its judgment, held as under:-

“9. The rule which is the most universal, namely that the best evidence the nature of the case will admit shall be produced, decides this objection that rule only means that, so long as the higher or superior evidence is within your possession or may be reached by you, you shall give no inferior proof in relation to it. Section 65 deals with the proof of the contents of the documents tendered in evidence. In order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document. Under Section

64, documents are to be provided (sic-proved) by primary evidence. Section 65, however permits secondary evidence to be given of the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in the said Section must be fulfilled before secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in the Section. In *Ashok Dulichand v. Madahavlal Dube and Another* [1975(4) SCC 664], it was inter alia held as follows:

"After hearing the learned counsel for the parties, we are of the opinion that the order of the High Court in this respect calls for no interference. According to clause (a) of Section 65 of Indian Evidence Act, Secondary evidence may be given of the existence, condition or contents of a document when the original is shown or to be in possession or power of the person against whom the document is sought to be proved or of any person out of reach of, or not subject to, the process of the Court of any person legally bound to produce it, and when, after the notice mentioned in Section 66 such person does not produce it. Clauses (b) to (g) of Section 65 specify some other contingencies wherein secondary evidence relating to a document may be given, but we are not concerned with those clauses as it is the common case of the parties that the present case is not covered by those clauses.

In order to bring his case within the purview of clause (a) of

Section 65, the appellant filed applications on July 4, 1973, before respondent No. 1 was examined as a witness, praying that the said respondent be ordered to produce the original manuscript of which, according to the appellant, he had filed Photostat copy. Prayer was also made by the appellant that in case respondent no. 1 denied that the said manuscript had been written by him, the photostat copy might be got examined from a handwriting expert. The appellant also filed affidavit in support of his applications. It was however, nowhere stated in the affidavit that the original document of which the Photostat copy had been filed by the appellant was in the possession of Respondent No. 1. There was also no other material on the record to indicate the original document was in the possession of respondent no.1. The appellant further failed to explain as to what were the circumstances under which the Photostat copy was prepared and who was in possession of the original document at the time its photograph was taken. Respondent No. 1 in his affidavit denied being in possession appeared to the High Court to be not above suspicion. In view of all the circumstances, the High Court to be not above suspicion. In view of all the circumstances, the High Court came to the conclusion that no foundation had been laid by the appellant for leading secondary evidence in the shape of the Photostat copy. We find no infirmity in the above order of the High Court as might justify interference by this Court.”

9. In the instant case, the Rent Controller has erred in allowing the application for secondary evidence as there is no averment in the eviction petition of the existence of a rent-note, nor is there any mention that the rent-note was in existence, however, the same has been mis-placed or lost. Therefore, without there being a pleading in regard to the existence of a document, no secondary evidence can be adduced to prove the existence of a document not mentioned or relied upon. The judgments as referred to above by the counsel for the appellant are fully applicable to the facts of the present case. In the case of ***Raj Kumar Vs. Bharat Bansal (supra)***, it has been held that the Court is under no obligation to permit a party to adduce irrelevant evidence or evidence beyond the pleadings which judgment would also be applicable herein since there is no specific plea by the respondent herein that there was a rent-note in existence. It is worthwhile, even to note that the application filed by the respondent seeking to adduce secondary evidence does not give the details as to when and how the same was lost or mis-placed.

10. Consequently, the impugned order is not sustainable in law and is hereby set aside.

11. The revision petition is accordingly allowed.

NOVEMBER 28, 2019
Ajay Goswami

(JAISHREE THAKUR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No