

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

**CR No.4874 of 2019(O&M)
Date of Decision: 19.08.2019**

Karambir

....Petitioner

Versus

Joginder Singh

.....Respondent

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

Present:Mr. Sushil Bhardwaj, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 23.07.2019 passed by Additional Civil Judge (Senior Division), Karnal, whereby the application for secondary evidence filed by the defendant/respondent was allowed.

[2]. Defendant sought permission to prove the documents viz. Ex.DX dated 06.06.2011, Mark DA i.e. copy of register dated 26.11.2010, Mark DH i.e. copy of power of attorney dated 29.11.2010, Mark DG i.e. power of attorney dated 29.11.2012, Mark DB i.e. copy of special proxy dated 01.05.2013 and Mark DC i.e. copy of register by way of secondary evidence.

[3]. Defendant alleged that original copies of aforesaid

documents are with the plaintiff. Plaintiff has denied possession over the aforesaid documents and claimed that defendant has prepared forged and fabricated documents by way of fraud. Documents relate to the stand taken by the defendant in the written statement.

[4]. It is a settled principle that existence and loss of the documents are two important events which are required to be proved by the party, seeking to lead secondary evidence. Secondary evidence can be permitted on proof of existence of document and loss thereof. Rival contentions of the parties can be looked into by the Court during the process of inquiry.

[5]. In **Ashok Kumar Sachdeva Vs. Harsh Malik, 2007(4) RCR (Civil) 311**, it was held that the party should be granted leave to lead secondary evidence. Whether such party ultimately succeeds in proving the document or not, is a question of fact and the same depends upon quality of evidence led by the parties. Grant of leave to lead secondary evidence does not mean that the document is admitted in evidence, nor it infers existence of any of the conditions indicated under Section 65 of the Evidence Act. It only amounts to holding an inquiry regarding existence of document and its loss under some circumstances. Failure or success of proving existence of document or its loss cannot be pre-determined without providing

opportunity to the parties. Whether it is proved or not, is to be seen after the leave is granted and the material produced by the parties is evaluated by the Court at an appropriate stage.

[6]. Offer of secondary evidence can be at best impeached in cross-examination. It is for the Court to examine and decide whether it is appropriate to rely on such secondary evidence or not for want of compliance of Section 65 of the Evidence Act. Reference can be made to **Dr. S.P. Arora Vs. Satbir Singh, 2010(5) RCR (Civil) 350** and **Simar Pal Singh Vs. Hakam Singh, 2009(14) RCR (Civil) 273.**

[7]. In **Bipin Shantilal Panchal Vs. State of Gujarat, 2001 (1) RCR (Criminal) 859**, the Hon'ble Apex court has laid down that the procedure has been set for receiving the documents when the same is objected to during trial. Practice of holding up trial on objections at the time of tendering of documents was castigated and was held to be an 'archaic practice'.

[8]. Leading of evidence at this stage, would not crystalize any substantial right in favour of the defendant, rather the evidence led by the parties would be tested at the relevant stage in respect of its admissibility, validity and genuineness. Later stage would be an appropriate stage for lawful consideration of such criteria in terms of validity, admissibility and genuineness of the document. In case, the Court finds the

secondary evidence legally not reliable, the Court would be at liberty to eschew the same.

[9]. For the reasons recorded hereinabove, I find that indulgence granted by the trial Court is not found to be arbitrary and the same is not beyond lawful jurisdiction of the trial Court. This revision petition is found to be totally devoid of merits and is dismissed as such.

19.08.2019

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No