

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5054 of 2019(O&M)
Date of Decision: 26.08.2019

Gurmail Singh

.....Petitioner

Versus

Gurtej Singh

.....Respondent

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

Present:Mr. Amit Jain, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 24.07.2019 passed by Additional Civil Judge (Senior Division), Payal, vide which application filed by the respondent under Section 65 of the Evidence Act for leading secondary evidence was allowed.

[2]. It is a settled principle of law that prayer in terms of Section 65 of the Evidence Act is only to hold an inquiry

regarding existence of document and its loss under some circumstances.

[3]. In **Ashok Kumar Sachdeva Vs. Harish Malik, 2007 (4) RCR (Civil) 311**, the High Court has held that the party should be granted leave to lead secondary evidence. Whether the party ultimately succeeds in proving the document or not is a question of fact and the same depends upon evidence of the parties. The grant of leave to lead secondary evidence does not mean that the document has to be admitted in evidence or it would give definite finding of existence of any of the conditions mentioned in Section 65 of the Evidence Act. It only amounts to holding an inquiry regarding existence of document at one point of time and its loss under some circumstances. The existence and loss of document would be tested by the trial Court at an appropriate stage on the basis of evidence to be led by the parties. Both the eventualities cannot be pre-determined without providing opportunity to the parties.

[4]. Secondary evidence can be allowed subject to existence of document and loss thereof to be proved by the party seeking production of secondary evidence. The aforesaid exercise can only be exercised after grant of leave and would be seen after the leave is granted and the material produced by the parties is evaluated by the Court in accordance with law.

[5]. The 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. In case, the Court finds that the secondary evidence is not legally reliable, the Court would be at liberty to eschew the same. However, the attempt of the party seeking production of secondary evidence or to exhibit the document cannot be thrown at this stage.

[6]. 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 document 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'.

[7]. Leading of secondary evidence would facilitate the Court to test the admissibility, validity and genuineness of the document in terms of its execution. If the execution of the document at the threshold of existence and loss thereof is proved, the Court can rely upon such document in accordance with law and in the event of failure, the Court would eschew the same.

[8]. The indulgence granted by the trial Court is not found to

be illegal on any of such parameters. This revision petition is accordingly dismissed.

26.08.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No