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

**Civil Revision No.6601 of 2015 (O&M)
Date of Decision: 24.07.2019**

**Kailash Chand VirmaniPetitioner
Vs
Satish Chander @ Satish Chand and others
....Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Kul Bhushan Sharma, Advocate
for the petitioner.

Mr. K.S. Khaira, Advocate for
Mr. Vaibhav Jain, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (Oral)

[1]. This revision petition has been preferred against the order dated 18.05.2015 passed by the Civil Judge (Jr. Divn.) Faridabad vide which the application under Section 65 of the Evidence Act (hereinafter to be referred as 'the Act') for permission to lead secondary evidence was dismissed.

[2]. Brief facts are that the Panchayati settlement allegedly executed between the parties is the bone of contention. Defendants have admitted their signatures on the settlement, but have denied execution of the same by alleging that the same was got signed in the police station under police pressure. In this way the contents of the document have been denied. The

factum of signing of some papers in the police station has been admitted by the defendants in their sworn testimony i.e. joint affidavit executed by Satish Chander @ Satish Chand, Radhey Shayam and Dinesh Virmani.

[3]. Plaintiff/petitioner moved an application under Section 65 of the Evidence Act for leading secondary evidence in the context of settlement which was arrived at in the presence of police. Plaintiff alleged that the original of the document was handed over to the then Station House Officer and now the same is not traceable in the police station.

[4]. Learned counsel for the petitioner submitted that the existence of signed document is *prima facie* proved by way of sworn testimony of the defendants, even though they have denied the contents of the same. Since the document is not traceable in the police station, therefore, its loss is *prima facie* proved. By showing the aforesaid circumstances, learned counsel further submitted that both the conditions are satisfied for resorting to provision in terms of Section 65 of the Act. The trial Court was not justified in dismissing the application.

[5]. I have considered the submissions made by learned counsel for the parties.

[6]. The scope of Section 65 of the Act is only in the form of enquiry. In **Bipin Shantilal Panchal vs. State of Gujarat, 2001**

(1) RCR (Criminal) 859, the Hon'ble Apex Court has laid down the procedure for receiving the documents when the same is objected to during trial. The Hon'ble Apex Court has castigated the practice of holding up trial on objections taken at the time of tendering of documents in evidence. Asking the Court to pass an appropriate order on the objection has been categorized as an '*archaic practice*'. Leading of evidence at the stage pursuant to passing of order do not crystallize any substantial right in favour of the defendants, rather the evidence led by the parties would be tested by the Court at the threshold of admissibility, validity and genuineness in terms of its execution at an appropriate stage. The later stage would be the relevant stage for lawful consideration of such a criteria in terms of validity, admissibility and genuineness of the document.

[7]. In Ashok Kumar Sachdeva vs Harish Malik, 2007 (4) RCR (Civil) 311, this Court held that the party should be granted leave to lead secondary evidence. Whether the party ultimately succeeds in proving the document or not is question of fact and the same depends upon nature of evidence led by the parties. To grant leave to lead secondary evidence does not mean that the document is admitted in evidence nor it is a finding of existence of any of the conditions indicated under Section 65 of the Evidence Act. It only amounts to holding up of inquiry in

respect of existence of document and its loss under some circumstances. Failure or success of proving existence of document or its loss cannot be pre-determined that too without providing opportunity. Whether it is proved or not, is to be seen after the leave is granted and the material produced is evaluated in accordance with law.

[8]. Similar proposition was answered in **Dr. S.P. Arora vs. Satbir Singh, 2010(5) RCR (Civil) 350** and **Simar Pal Singh vs. Hakam Singh, 2009(14) RCR (Civil) 273**, wherein it was held that 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 upon such secondary evidence or not for want of compliance of Section 65 of the Act.

[9]. For the reasons recorded hereinabove, I deem it appropriate to accept this revision petition. Consequently, the impugned order dated 18.05.2015 passed by the Civil Judge (Jr. Divn.) Faridabad is set aside. The trial Court shall proceed in accordance with law. Normal consequences to follow.

July 24, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No