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

CR No. 7047 of 2019
Date of Decision: 13.11.2019

Jaswant Singh

-Petitioner

Vs

Sunita Gupta

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. P.S. Dhaliwal, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has assailed the order dated 25.09.2019 passed by Civil Judge (Junior Division), Barnala vide which the application for leading secondary evidence filed by the plaintiff was allowed.

It is a settled principle of law that the application for secondary evidence can be allowed subject to existence and loss of the document to be proved by the plaintiff in accordance with law.

Learned counsel for the petitioner states that there is no specific pleading with regard to existence and loss of the document and therefore, from the conduct of the plaintiff, it can be taken to be a fact that the plaintiff has not come to the Court with clean hands.

In order to seek leading of secondary evidence, plaintiff has to prove existence and execution of the documents which are sought to be proved on record by way of secondary evidence. Evidence beyond pleadings cannot be looked into in the absence of any amendment in the pleadings in terms of Order 6 Rule 17 CPC.

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. The Hon'ble Apex Court has castigated the practice of holding up trial on objections taken at the time of tendering documents in evidence. At that stage, asking the Court to pass an appropriate order on objections has been categorized as an 'archaic practice'.

On the basis of aforesaid ratio, the leading of evidence at the stage pursuant to the passing of the impugned order would not crystallize any substantial right in favour of the defendants, rather the evidence led by the parties would be tested at the threshold of admissibility, validity and genuineness of the document in terms of execution at a later stage. Later stage would be an appropriate stage for lawful consideration of such a criteria i.e. validity, admissibility and genuineness. If the

execution of the documents in question is proved, the Court would rely upon the same. If the execution of the documents is not proved, the Court will eschew the same.

The view expressed in Dr. S.P. Arora vs. Satbir Singh, 2010(5) R.C.R. (Civil) 350 and Simar Pal Singh vs. Hakam Singh, 2009(14) R.C.R. (Civil) 273 can be relied in the aforesaid context.

In terms of ratio as culled out from H. Siddiqui (dead) by LRs vs. A. Ramalingam, 2011(2) RCR(Civil) 696, it can be noticed that though the provision permits the parties to adduce secondary evidence, but the same is subject to limitation. The secondary evidence relating to the contents of the document is inadmissible until non-production is accounted for, so as to bring the same within one or the other cases provided for in the Section. When there is no factual foundation led for secondary evidence, it is not permissible for the Court to allow the party to adduce secondary evidence. It is a settled principle of law that the secondary evidence must be authenticated by fundamental evidence. Mere exhibition of a document does not dispense with the proof of its execution.

The contention of both the parties would be adequately answered by the Court at the time of consideration of the issue on merits. Leading of secondary evidence has been

allowed by the trial Court. It does not amount to certify the admissibility of such a document produced on record at this stage of litigation. It is always open to the Court to comment upon admissibility of the document in view of evidence led by the parties. The Court has to see the admissibility of the document in accordance with law. Mere denial by the parties to produce original document in their possession does not lay down fundamental facts for producing secondary evidence. Even in the case of falling under the ambit of Section 65(c) of the Act, the Court has to see admissibility of such evidence where it is lost or destroyed by the party in whose possession/favour it created an enforceable right.

The ratio in **U. Sree vs. U. Srinivas, 2013 (1) RCR (Civil) 883**, can be relied.

The aforesaid propositions were discussed by this Court in Civil Revision No. 3794 of 2016 decided on 11.10.2017.

For the reasons recorded hereinabove, I do not see any justification to interfere in the impugned order.

This revision petition is accordingly, dismissed.

13.11.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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| 1. | Whether speaking/reasoned | : | Yes/No |
| 2. | Whether reportable | : | Yes/No |