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

1. **Civil Revision No.7334 of 2019 (O&M)**
Date of Decision: 20.11.2019

CHANDER KANTAPetitioner
Vs
SHANKAR DASS JINDAL & ANR.....Respondents

2. **Civil Revision No.7335 of 2019 (O&M)**

MANOJ JINDALPetitioner
Vs
SHANKAR DASS JINDALRespondent

3. **Civil Revision No.7350 of 2019 (O&M)**

CHANDER KANTAPetitioner
Vs
SHANKAR DASS JINDALRespondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. H.S. Saggu, Advocate
for the petitioner(s).

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CR Nos.7334, 7335 and 7350 of 2019 (O&M) are being disposed of. Since all these revision petitions involve common cause of action, therefore, the facts are being culled out from CR No.7334 of 2019 (O&M).

[2]. Petitioner(s) has assailed the order dated 22.10.2019 (Annexure P-2) passed by the Civil judge (Junior Division) Dhuri, vide which the application for leading secondary evidence to

prove photocopy of Cheque No.029057 dated 31.03.2017 in a sum of Rs.3,00,000/- was allowed.

[3]. Brief facts are that the two suits for recovery of Rs.4,45,000/- and Rs.7,35,000/- inclusive of interest calculated @ 7.5% per annum along with *pendente lite* and future interest were filed by the plaintiff/respondent. Another suit for recovery of Rs.3,36,000/- inclusive of interest calculated @12% per annum was filed plaintiff/petitioner-herein (Chander Kanta). In the aforesaid suits, an application for permission to lead secondary evidence to prove cheque No.029057 dated 31.03.2017 in a sum of Rs.3,00,000/- issued by defendant Chander Kanta in the name of Pardeep Jindal (plaintiff) was filed by the respondent-Shankar Dass Jindal.

[4]. The trial court vide the impugned order dated 22.10.2019 accepted the aforesaid application on the premise that PW-3 Manoj Jindal was cross-examined by the counsel for defendant and during his cross examination, he failed to produce the said cheque and further stated that the said cheque might be issued in favour of the Bank.

[5]. The Trial court observed that initially the said cheque was issued in favour of the son of the defendant, but the same was returned to the plaintiff and photocopy of the same was retained by him. The court further observed that proving and

disproving of this fact is very material for the decision of the case. In view of this the application for permission to lead secondary evidence was allowed.

[6]. Learned counsel for the petitioner(s) submitted that the Cheque No.029057 was never issued and copy sought to be proved by secondary evidence is a forged document. Infact, at one point of time before 31.03.2017, Cheque No.029057 was used to pay some amount, but while filling the cheque, some mistake occurred and as such the cheque was destroyed. So, on 31.03.2017, the original Cheque No.029057 was not in existence.

[7]. I have considered the submissions made by learned counsel for the petitioner(s).

[8]. It is a settled principle of law that the plaintiff can lead secondary evidence by exhibiting the same at the relevant stage, even if the same was objected to by the opposite party. The document can be received in evidence without commenting upon its authenticity and genuineness at that stage. After receiving the document in evidence with objection, the trial Court can examine the admissibility and genuineness of the document at the later stage. If the execution of such document is proved with reference to evidence, the same can be relied and if the same is not found to be proved, the document can be

eschewed by the Court.

[9]. In **Bipin Shantilal Panchal vs. State of Gujarat, 2001(1) RCR (Criminal) 859**, the Hon'ble Apex Court 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*'.

[10]. 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 defendant(s), 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 and its nature. Later stage would be an appropriate stage for lawful consideration of such a criteria i.e. validity, admissibility and genuineness of the document. Though there is no provision in law for de-exhibiting the document already exhibited in evidence, but the exhibition of a document, if objected to has to be answered in terms of its admissibility at a later stage. The offer of secondary evidence can be at best impeached in cross examination. It will be for the Court to

examine and decide as to whether it will be appropriate to rely upon such secondary evidence or not for want of compliance of Section 65 of the Evidence Act. In case, the Court finds the secondary evidence not reliable, the Court is at liberty to eschew the same. However, the attempt of a party for production and to exhibit the document cannot be thrown at this threshold.

[11]. 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 Evidence Act.

[12]. In view of legal position explained above, I find no illegality in the impugned order passed by the trial Court. All these revision petitions are accordingly dismissed.

November 20, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No