

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

CR No. 2128 of 2020 (O&M)

Date of decision: September 15, 2020

Punjab State Warehousing Corporation

...Petitioner

Versus

B.K. Chadha

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Parambir Singh, Advocate,
for the petitioner.

Mr. Amaninder Preet, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. The instant revision petition has been filed being aggrieved against the order dated 11.2.2020 as passed by the Additional Civil Judge, (Senior Division) Bhagapurana, allowing the respondent to lead secondary evidence.

2. In brief, the facts are that a suit for recovery of ₹7,17, 86,538/- was filed by the petitioner against the respondent on the ground that a huge loss has been caused the petitioner—Corporation by the misconduct and negligence on the part of the respondent herein. Departmental proceedings were held and the respondent herein was eventually dismissed from service. His appeal against the dismissal order was also rejected by the Appellate Authority on 17.11.2015. Thereafter, recovery proceedings were initiated in the form of a suit for recovery. The defendant-respondent herein submitted his written statement contending that his order of dismissal was pending

before the High Court, while disputing and denying the averments made out in the plaint. The petitioner herein led evidence and thereafter the respondent herein summoned FCI witnesses along with the relevant record. DW 3 Praveen Kumar appeared on 02.12.2019 and stated that he had only brought part of the summoned record i.e the attested copy of D.O. No Q.C. 7/Rice Inspection/Genl./2004-2005 dated 20.12.2004/1523. The case was deferred for want of the original record. He appeared before the Additional Civil Judge on 13.01.2020 stating that the original letter *D.O. No Q.C.7/Rice Inspection/General/2004-2005 dated 20.12.2004* is not available on the record and only a photocopy of the said letter is available which he produced in court. DW.5 Satish Kumar, Depot Manager FCI Moga, appeared on 13.01.2020 and stated that the summoned record i.e letter dated 11.01.2013 written by Manager, Depot FCI Nirmal Singh to Area Manager FCI, Moga in respect of office order No. E (10) hiring/PSW C/Genl./Moga/2007/5256 dated 5/7.12.2012 is not available in the office record and only the photo copy is available.

3. Since the original letters/office orders were not available on the summoned record, an application was preferred on 13.1.2020 by the respondent to lead secondary evidence to prove letter dated 11.01.2013 bearing No. E (10) hiring/PSWC/Genl. Moga/2007/5256 dated 5/7/12.2012 and D.O. No Q.C. 7/Rice Inspection/Genl./2004-2005 dated 20.12.2004/1523. The application was contested on ground that the application does not fulfil the precondition as laid down in Section 65 (a) to 65 (g) of the Indian Evidence Act, 1872. It was argued that the existence of the original document of which secondary evidence is sought, has not been proved and an attested document cannot be considered. The documents of

which secondary evidence is sought are not certified copies, as such secondary evidence cannot be permitted. It is argued that FCI has not stated as to how the original document has been lost or destroyed. On hearing the arguments, the trial court allowed the application to adduce secondary evidence. Hence the instant revision petition.

4. Mr. Parambir Singh, learned counsel appearing on behalf of the petitioner herein would contend that the impugned order is not sustainable since the ingredients as specified in Section 65 (a) to 65 (g) of the Indian Evidence Act, 1872 are not satisfied. It is argued that before secondary evidence can be permitted, the existence of the original is to be proved, while arguing that secondary evidence can be allowed of certified copies, which is not so in the instant case. Learned counsel for the petitioner relies upon judgements rendered in **H. Siddiqui (dead) by L.Rs Vs A. Ramalingam AIR 2011 SC 1492** , **U Sree Vs. U. Srinivas AIR 2013 SC 415**, **Benga Behera and another Vs. Braja Kishore Nanda and others (2007) 9 SCC 728** , **Smt. J. Yashoda Vs. Smt. K. Shobha Rani AIR 2007 SC 1721**, amongst others.

5. Per contra, Mr. Amaninder Preet, learned counsel for the respondent would submit that the evidence has already been led pursuant to the order dated 11.2.2020, i.e. before the matter was listed before the High Court, which fact was not disclosed. It is argued that the original record was summoned by the petitioner in respect to two letters as issued by FCI, but the witnesses did not produce the original and only produced the photocopies. It is argued that these are public documents and not in his custody, therefore he ought to be given liberty to lead secondary evidence.

Learned counsel would also rely upon **Marwari Kumhar and others vs**

Bhagwanpuri Guru Ganeshpuri 2000 (4) RCR (Civil) 279 to contend that secondary evidence is permissible where the original is lost or destroyed, and that sub clause (c) of Section 65 is independent of sub clause 65 (f) of the Indian Evidence Act, 1972.

6. I have heard the counsel for the parties and with their assistance have gone through the pleadings and the case law.

7. In **Smt. J. Yashoda (supra)**, the Hon'ble Supreme Court, while dealing with the question of allowing secondary evidence came to hold that as a general rule secondary evidence would be led only in the absence of primary evidence and secondary evidence may be given in the absence of better evidence available when proper explanation for its absence is given.

8. In a judgment rendered in **H. Siddiqui (dead) by LRs Vs. A. Ramalingam 2011 (2) Civil Court Cases 405**, it has been held as under:-

“Provisions of Section 65 of the Act 1872 provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. In a case where original documents are not produced at any time, nor, any factual foundation has been led for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement

thereon. (Vide: The Roman Catholilc Mission & Anr. v. The State of Madras & Anr., AIR 1966 SC 1457; State of Rajasthan & Ors. v. Khemraj & Ors., AIR 2000 SC 1759; Life Insurance Corporation of India & Anr. v. Ram Pal Singh Bisen, (2010) 4 SCC 491; and M. Chandra v. M.Thangamuthu & Anr., ., (2010) 9 SCC 712)”

9. **In Marwari Kumhar v. Bhagwanpuri Guru Ganeshpuri 2000 (4) RCR (Civil) 729** it has been held as under:

“This it is to be seen that under sub-clause (c) of Section 65, where the original has been lost or destroyed, then secondary evidence of the contents of the document is admissible. Sub-clause (c) is independent of sub-clause (f). Secondary evidence can be led, even of a public document, if the conditions as laid down under sub-clause (c) are fulfilled. Thus if the original of the public document has been lost or destroyed then the secondary evidence can be given even of a public document. This is the law as has been laid down this Court in Mst. Bibi Aisha and others v. The Bihar Subai Sunni Majlis Avaqaf and others, reported in AIR 1969 Supreme Court 253. In this case a suit had been filed for setting aside a registered mokarraai lease deed and for restoration of possession of properties. The suit had been filed on behalf of a Waqf. The Original Waqf Deed was lost and an ordinary copy of the Waqf Deed was produced in evidence . The question was whether an ordinary copy was admissible in evidence and whether or not secondary evidence could be led of a public document. The Court held that under Section 65 clauses (a) and (c) secondary evidence was admissible. It is held that a case may fall both under clauses (a) or (c) and (f) in which case secondary evidence would be admissible. It was held that clauses (a) and (c) were independent of clauses (f) and even an ordinary copy would, therefore, be admissible. As stated above the case that the original was no longer available in Court records and the certified copy was lost has not been disbelieved. Thus the ordinary copy of the earlier judgment was admissible in evidence

and had been correctly marked as an exhibit by the trial Court.”

10. Section 65 of the Indian Evidence Act enumerates instances when secondary evidence relating to documents may be led. Section 63 (2) may be referred to, which allows for a document to be admitted as secondary evidence, being a copy prepared by mechanical process and the correctness of the photostat document has to be established.

11. In **Surinder Kaur v. Mehal Singh and others 2014(1) R.C.R. (Civil) 467** it has been held as under:-

"a) Photostat copy of a document can be allowed to be produced only in absence of original document.

b) When a party seeks to produce Photostat copy it has to lay the foundational facts by proving that original document existed and is lost or is in possession of opposite party who failed to produce it. Mere assertion of the party is not sufficient to prove these foundational facts.

c) The objections as to non existence of such circumstances or non existence of foundational facts must be taken at earliest by the opposite party after the photostat copy is tendered in evidence.

d) When the opposite party raises objection as to authenticity of the Photostat copy its authenticity has to be determined as every copy made from a mechanical process may not be accurate. Both the requirements of clause (2) of section 63 are to be satisfied.

e) Allowing production of Photostat copy in evidence does not amount to its proof. Its probative value has to be proved and assessed independently. It has to be shown that it was made from original at particular place and time.

f) In cases where the Photostat copy is itself suspicious it should not be relied upon. Unless the court is satisfied that the Photostat copy is genuine and accurate it should not be read in evidence.

g) The accuracy of photostat copy shall be established on oath to the satisfaction of court by the person who prepared such copy or

who can speak of its accuracy."

12. One of the pre-conditions for leading additional evidence is that the party must establish that the original is lost, destroyed or unavailable.

Section 65 of the Indian Evidence Act, 1972 is re-produced hereunder:-

"65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

(a) When the original is shown or appears to be in the possession or power— of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in 1[India] to be given in evidence2; 1[India] to be given in evidence2;"

(g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible. In case (b), the written admission

is admissible. In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible. In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents. (emphasis supplied)”

13. In the case in hand, the document sought to be exhibited is a public document as they pertain to *two letters written by officials of FCI*. On 2.12.2019, the witness (DW.3) stated that attested copy has been brought as regards *D.O. no Q.C. 7/Rice Inspection/Genl./2004-2005 dated 20.12.2004/1523*, but on the next date he clearly stated that the original is not available and only a photocopy of the said letter is available on the record. Similarly, on 13.1.2020, Satish Kumar (DW.5) clearly stated that letter dated 11.01.2013 bearing *No. E (10) hiring/PSW C/Genl. Moga/2007/5256 dated 5/7/12.20012* is not available in the office record and only a photocopy is available. These statements would be sufficient to satisfy the ingredient of Section 65 (c) of the Evidence Act, which specifies that secondary evidence can be permitted in case when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time. The documents sought to be exhibited were not in possession of the respondent and were part of the official record maintained by the FCI, which did not produce the original and only brought attested/ photocopy of the same. No fault or neglect could be attributed to the respondent in this regard. In such a case the respondent would be permitted to lead secondary evidence. The ratio as laid down in **Marwari Kumhar (supra)** would be fully applicable to the facts herein.

14. Finding no merit in this revision petition, it stands dismissed.
15. However, it is made clear that mere exhibition of documents by secondary evidence *perse*, does not amount to proof of its execution. Therefore, photostat copies of the documents are required to be proved in terms of their execution. The genuineness, correctness and existence of the document shall have to be established during the trial and the trial court shall record the reasons before relying on those secondary evidences.

September 15, 2020
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No