

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-2575-2020(O&M)

Date of decision:03.03.2021

**Vinod Kumar**

.....Petitioner

Versus

**Satbir Singh**

.....Respondent

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr.Sandeep K Sharma, Advocate for the petitioner

Mr.Amit Khatkar, Advocate for the respondent

**ANIL KSHETARPAL, J.**

The petitioner-plaintiff has assailed the correctness of the order dated 20.02.2020 passed by Civil Judge, Senior Division, Rohtak while dismissing an application for permission to lead secondary evidence.

Some facts are required to be noticed. The plaintiff filed a suit for specific performance of the agreement to sell (02.03.2015) with consequential reliefs of possession and permanent injunction. He claims that the defendant executed an agreement to sell dated 02.03.2015 which was reduced into writing and was typed by a professional document writer. As per the agreement to sell, a plot measuring 500 sq. yards was agreed to be sold for a sum of Rs.63,50,000/- out of which he is alleged to have paid Rs. 25,00,000/- to the defendant. The parties had agreed to get the sale deed executed and registered on 14.01.2016. The defendant

filed an application under Order 11 Rule 14 CPC for direction to the plaintiff to produce the alleged agreement to sell and the receipt thereof. The plaintiff filed reply to the application disclosing that the aforesaid original agreement to sell and the other documents were kept in the office of Vijay Properties but the same have been stolen and FIR No. 371 dated 12.7.2016 has already been registered. Learned trial court dismissed the application of the defendant for production of documents on 02.01.2018. The defendant thereafter filed a written statement denying the execution of the agreement to sell.

The plaintiff filed an application for permission to lead secondary evidence which was opposed by the defendant. The court, as noticed earlier, dismissed the application.

This Court has heard learned counsel for the parties at length and with their able assistance perused the paper book. Learned counsel representing the plaintiff-petitioner submits that in fact the application itself was mis-conceived as no application for permission to lead secondary evidence is maintainable. He draws the attention of the Court to the judgments in '**Madan vs. Shankar and others**' RSA-327-1989 decided on 01.11.2018, '**Dhanpat vs. Sheo Ram**' 2020 SCC online SC 606 and in Civil Revision Application no.82 of 2016 decided on 10.11.2017 by the Bombay High Court.

On the other hand, learned counsel representing the respondent submits that the petitioner had himself filed the application and therefore, now, he cannot be permitted to take a U-turn and contend that the application was not maintainable.

After having heard learned counsel for the parties at sufficient length, this Bench is of the considered view that such application is neither maintainable nor desirable nor even necessary. However, a wrong practice has developed for quite some time. This Bench after having considered this aspect in detail already held that no such application is maintainable. Similarly, Hon'ble the Supreme Court in Dhanpat (supra) has also observed that no such application is required to be filed. Relevant discussion is in Para 20 of the judgment, which is extracted as under:-

“There is no requirement that an application is required to be filed in terms of Section 65(c) of the Evidence Act before the secondary evidence is led. A party to the lis may choose to file an application which is required to be considered by the trial court but if any party to the suit has laid foundation of leading of secondary evidence, either in the plaint or in evidence, the secondary evidence cannot be ousted for consideration only because an application for permission to lead secondary evidence was not filed.”

Further, while deciding Civil Revision Application no.82 of 2016, the Bombay HC (supra) has also condemned such a practice and observed as under:-

“**10.** This, I regret to say, is a misconception that has now attained the proportions of an epidemic, especially in the Court of Small Causes and in the civil courts. Apparently, none of these courts seems to care that there is no provision in the Code of Civil Procedure 1908 or the Evidence Act

for any such application. Nobody seems to care either that there are reported decisions starting from *Indian Overseas Bank v Triokal Textile Industries & Ors.*, of Vazifdar J (as he then was) directly to the contrary and saying that no such application is maintainable, desirable or even necessary.

11. I have recently set out the law on this and I will say so briefly once again: either secondary evidence is led or it is not led. Either the provisions of Section 65 are met or they are not met. No permission of a Court is required to lead evidence of any kind. No judge in the subordinate judiciary to this High Court will hereafter will insist on any such application under any circumstances whatsoever. I do not think I can put it in any clearer terms than this. Any such order is wholly illegal and liable to be set aside. A copy of this order is now to be circulated to every Civil Judge in the State of Maharashtra. To clarify: in an evidence affidavit under Order 18, a witness may well say of a given document that he cannot prove it by direct evidence and then proceed to adduce the secondary evidence in compliance with Section 65 of the Evidence Act. The trial court is to consider that evidence, viz., the reason given for not leading direct evidence, and the secondary evidence led, and is to then decide whether the secondary evidence led is sufficient. That is all. There is absolutely no question of an application, whether styled as an interim application or a 'MARJI' application, for 'permission' to lead secondary evidence. The Court cannot refuse that permission, and it cannot insist on an application for any such permission."

Keeping in view the aforesaid facts, this Court is of the opinion that the order under challenge cannot be sustained. This order is declared to be inoperative. The Civil Court is directed to decide the aspect of admissibility of the secondary evidence while deciding the suit. Needless to observe that the plaintiff shall not be denied an opportunity to lead the relevant evidence. The trial court while finally deciding the case will be entitled to evaluate such evidence and decide whether the plaintiff has successfully proved the existence, validity and genuineness of the agreement to sell and the receipt thereof by way of secondary evidence.

With these observations, the revision petition is disposed of.

**03.03.2021**

rekha

Whether speaking/reasoned

Whether Reportable

Yes /No

Yes / No

**(ANIL KSHETARPAL)**  
**JUDGE**