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

**CR-6655-2014 (O&M)
Reserved on : 13.07.2022
Date of decision : 27.07.2022**

Sukhwinder Kaur and Others

.....Petitioners

Versus

Devinder Sandhu and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Anil Chawla, Advocate for the petitioners.

Mr. Rakesh Bhatia, Advocate for respondent No.1.

Service of respondent No.2 dispensed with.

None for respondent No.3.

ALKA SARIN, J.

The present revision petition under Article 227 of the Constitution of India has been filed by the plaintiff-petitioners impugning the order dated 03.09.2014 whereby their application for leading secondary evidence was partly allowed.

Learned counsel for the plaintiff-petitioners would contend that the photocopy of the receipt dated 04.10.2007 which the plaintiff-petitioners had sought permission to produce as secondary evidence was declined on the ground that copies of the original cannot be received as secondary evidence. Learned counsel would further contend that the said receipt was admittedly executed by the defendant-respondents. However, it is stated by them that

the said document was not in their possession and, hence, the same was required to be proved by way of secondary evidence. In support of his contentions, learned counsel for the plaintiff-petitioners has relied upon the judgments of this Court in the cases of **Kashmir Kaur Vs. Sukhwant Kaur & Ors. [2006(2) RCR (Civil) 683]** and **Ashok Kumar Sachdeva Vs. Harish Malik [2007(4) RCR (Civil) 311]**.

Per contra, learned counsel for the defendant-respondent No.1 has contended that a photocopy cannot be permitted to be led as secondary evidence. It is further the contention that once the receipt had been admitted in the written statement, there was no requirement to produce the same as secondary evidence. In support of his contentions, learned counsel for the defendant-respondent No.1 has relied upon the judgments of Hon'ble Supreme Court in the cases of **Smt. J. Yashoda Vs. Smt. K. Shobha Rani [2007 (2) RCR (Civil) 840]** and **Hariom Agrawal Vs. Prakash Chand Malviya [2007 (4) RCR (Civil) 548]**.

Heard.

In the present case, vide the impugned order the application of the plaintiff-petitioners for leading secondary evidence has partly been allowed qua the power of attorney dated 02.04.2009. However, qua production of a photocopy of the receipt dated 04.10.2007 as secondary evidence, the application has been declined.

The Supreme Court in the case of **Rakesh Mohindra Vs. Anita Beri & Ors. [2015 (4) RCR (Civil) 1023]** held as under :

“17. The pre-conditions for leading secondary evidence are that such original documents could not be produced by the party relied upon such documents in spite of best

efforts, unable to produce the same which is beyond their control. The party sought to produce secondary evidence must establish for the non-production of primary evidence. Unless, it is established that the original documents is lost or destroyed or is being deliberately withheld by the party in respect of that document sought to be used, secondary evidence in respect of that document cannot accepted.”

In the case of **Surinder Kaur Vs. Mehal Singh & Ors. [2014 (1) RCR (Civil) 467]** while dealing with the question as to whether photocopy can be tendered as secondary evidence, this Court, after referring to the case law, held as under :

“20. The proposition of law laid down in aforesaid judgments provides answers to the questions raised above. Thus a Photostat copy of a document can be produced in evidence only when it is alleged and proved that the original was in existence and is lost or destroyed or is in possession of opposite party who failed to produce it or in any other circumstances mentioned in section 65 of the Act. These foundational facts, however, are to be proved by leading cogent evidence. As regards the question whether photostat copy of a document comes within the meaning & definition of 'secondary evidence' as contained in section 63 of the Act, there cannot be absolute answer because every photostat copy may not be accurate. For

this purpose the probative value of the Photostat copy has to be proved independently.

21. The principles culled out from the aforesaid discussion are summarized below:

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.

22. The abovesaid principles must be followed by the courts while admitting a photostat copy as secondary evidence and assessing its probative value.”

The judgments relied upon by learned counsel for the defendant-respondent No.1 would not be applicable to the facts of the present case inasmuch as in **Hariom Agrawal’s** case (*supra*), the documents were insufficiently stamped and it was held that photocopy cannot be admitted as secondary evidence on payment of fee and penalty. In **J. Yashoda’s** case (*supra*), their Lordships of the Supreme Court held that as a general rule secondary evidence was admissible only in the absence of primary evidence. If the original itself was found to be inadmissible in evidence due to the failure on the part of the party who files it, the same party would not be allowed to introduce the secondary evidence.

In the present case the document (receipt) was admittedly executed by the defendant-respondents and is now stated not to be in their possession. That being so, the same can be permitted to be led as secondary evidence. Needless to say that the probative value of the photocopy would be needed to be proved independently.

In view of the above, the present revision petition is allowed.

The plaintiff-petitioners shall be permitted to lead secondary evidence in respect of the receipt dated 04.10.2007 which would be then proved in accordance with law.

The revision petition stands allowed in the above terms.

Pending applications, if any, also stand disposed off.

27.07.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO