

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 1684 of 2019

Date of Decision: 22.09.2022

Vijay Paul Gulia

... Petitioner(s)

Versus

Rohit Sharma and another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Anil Ghangas, Advocate
for the petitioner(s).

None for the respondents.

Anil Kshetarpal, J.

1. The correctness of the order passed by the trial Court permitting the plaintiffs to lead secondary evidence of the alleged agreement to sell has been assailed.

2. The plaintiffs filed a suit for recovery of ₹13,50,000/- on the basis of an agreement to sell, allegedly executed between the parties. They produced a photocopy of the agreement to sell. The defendant claims that such agreement to sell is forged and fabricated. The defendant has filed an application under Order XI Rule 14 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) for directing the plaintiffs to produce the original documents. The plaintiffs, in reply, have denied that the originals are in their possession. They claim that the original documents are in the possession of the defendant.

Thereafter, an application was filed by the plaintiffs for

permission to lead secondary evidence, which, as already noticed, has been allowed.

4. The learned counsel representing the petitioner submits that before allowing an application for permission to lead the secondary evidence, the Court did not hold enquiry “As to whether such evidence is reliable or not?” He submits that the Court must record a finding “Whether such evidence falls within the scope of Section 65 of the Indian Evidence Act, 1872 (hereinafter referred to as “the 1872 Act”)?

5. Heard the learned counsel representing the petitioner, at length and with his able assistance, perused the paper-book.

6. Firstly, a wrong practice has been established before the Courts below to entertain an application for permission to lead secondary evidence. In fact, this aspect has been examined, in detail, by the Bombay High Court in *Civil Revision Application No.82 of 2016 decided on 10.11.2017*, this Court in *Vinod v. Satbir (Civil Revision No. 2575 of 2020, decided on 03.03.20221)* wherein the Court has followed *Madan vs. Shankar and Others (Regular Second Appeal No. 327 of 1989, decided on 01.11.2018)* as well as the Supreme Court in *Dhanpat vs. Sheo Ram 2020 SCOnline SC 606* wherein, it has been observed that all the relevant evidence must be led by the parties. Once it has been led, the Court is required to examine “Whether such evidence is primary or secondary?” If the Court comes to a conclusion that the evidence, so led, is secondary evidence, the Court shall further examine “Whether it fulfills the parameters laid down in Section 65 of the 1872 Act?”

7. Secondly, while allowing or disallowing an application for

permission to lead the secondary evidence, if any, the Court is not expected to hold a separate trial on the aforesaid aspect. This matter can be decided while deciding the case itself. Whenever an application for permission to lead the secondary evidence is allowed, it is subject to the proof of existence of circumstances mentioned in Section 65 of the 1872 Act.

8. Keeping in view the aforesaid facts, no ground is made out to interfere. Hence, the present revision petition is dismissed.

(Anil Kshetarpal)
Judge

September 22, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No