

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CR-1775-2022 (O&M)  
Date of decision: 19.07.2022

**Shri Ganesh Cotton Factory Pvt. Ltd. and another**

**... Petitioners**

**Vs.**

**M/s Khem Chand Bahadar Chand Ahuja, Abohar and others**

**... Respondents**

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present: Mr. Gaurav Chopra, Sr. Advocate with  
Mr. Rishabh Bajaj, Advocate  
for the petitioners.

Mr. Kanwaljit Singh, Sr. Advocate with  
Mr. Rohit Nagpal, Advocate  
for respondent No.1.

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**ARVIND SINGH SANGWAN, J. (ORAL)**

**CM-8230-CII-2022**

For the reasons stated in the application, same is allowed and date of hearing is preponed from 07.11.2022 to today.

CM stands disposed of.

**CR-1775-2022**

Prayer in this petition is for setting aside the order dated 21.02.2022 passed by the Civil Judge (Jr. Divn.), Abohar in Civil Suit No.53 of 2016 titled as *M/s Khem Chand Bahadar Chand Ahuja, Abohar Vs. Shri Ganesh Cotton Factory Pvt. Ltd. and others*, vide which application filed by the

plaintiff-respondent No.1 under Section 65(g) of the Indian Evidence Act (for short 'the Act') read with Section 151 CPC was allowed. It is also prayed that the subsequent order dated 15.03.2022, granting last opportunity to the petitioner to examine PW8 Satpal, be also set aside.

Brief facts of the case are that petitioner No.1-company and respondent No.1-partnership firm were sister concerns, involved in a family business. There was a family partition on 31.10.1991 by way of arbitration award and the business was separated in four groups. Later on, respondent No.1-plaintiff filed a suit for recovery of Rs.15,00,84,761.36 along with interest with regard to business dealings with petitioners-defendants No.1 & 2. The defendants-petitioners put in appearance and contested the suit. When the case was fixed for evidence of the plaintiff, the trial Court recorded statement of PW8 Satpal, who tendered his affidavit as Ex.PW8/A, wherein he deposed that he remained Accountant of the parties and since 2015, he was maintaining the books of accounts and further stated that from 1989 to 2014, there was an outstanding balance of Rs.2,44,33,995.36 and exhibited certain entries in this regard. Respondent No.1-plaintiff thereafter filed an application under Section 65 (g) of the Act read with Section 151 CPC seeking permission to prove the entries recorded in the regularly maintained account books of the plaintiff regarding liability of the defendant qua the suit amount. It is stated in the application that since account entries to be proved by the plaintiff and his witnesses are numerous, original of which is already brought on record at the time of filing of the plaint and the record consists of numerous accounts, which cannot be conveniently examined, said evidence can be brought by PW8 Satpal.

The application was contested by the petitioners-defendants No.1 & 2 on the ground that Section 65(g) of the Act relates to secondary evidence on the grounds available under the Act.

The trial Court, vide impugned order dated 21.02.2022, allowed the application.

Learned senior counsel for the petitioners has argued that a perusal of the impugned order reflects that before passing the order, the trial Court has not recorded any cogent findings, as to why the permission to lead secondary evidence under Section 65 (g) of the Act is granted to the plaintiff. It is further argued that the trial Court has not taken into consideration Section 34 of the Act, which provides that entries in the books of account including those maintained in electric form regularly kept in the course of business are relevant whenever they refer to a matter, into which the Court has to inquire but such statement shall not alone be sufficient evidence to charge any person with liability. It is also argued that in order to avoid the rigor of Section 34 of the Act, the application under Section 65(g) of the Act has been filed and the same is allowed, without appreciating the law and facts.

In reply, learned senior counsel for respondent No.1 has argued that Section 65(g) of the Act provides that secondary evidence relating to the documents may be given of existence, condition or contents of a document in cases, as specified under Sections 65(a) to Section 65(g) of the Act. It is further argued that under Section 65 (g) of the Act, it is provided that when the original consists of numerous accounts or other documents, which cannot conveniently be examined in the Court and the fact to be proved is general result of the whole

collection, evidence may be given, as to the general result of the documents by any person, who has examined them and who is skilled in examination of such document. It is also argued that since PW8 Satpal being Accountant, of both the plaintiff and defendants, tendered the voluminous documents relating to accounts of plaintiff and defendants, which has already been exhibited as Ex.PW8/A to Ex.PW8/26, in order to prove a gist of statement of account, so as to enable the trial Court to come to a definite conclusion, the application was moved and the same has been rightly allowed by the trial Court.

After hearing learned counsel for the parties and going through the record, finding no illegality or infirmity in the impugned orders, present petition is dismissed.

However, it is clarified that the evidence, which will be produced by the respondent-plaintiff, will essentially be secondary evidence and will not partake the character of primary evidence.

Considering the fact that suit is pending since 2016 and is still at the stage of plaintiff's evidence, it is directed that the trial Court will make all endeavour to decide the same within a period of one year from today.

**[ ARVIND SINGH SANGWAN ]**  
**JUDGE**

19.07.2022  
*vishnu*

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No