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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision-2548-2022 (O&M)
Date of Decision:08.07.2022

Ravinder Singh @ Jassi

.. Petitioner

Vs.

Indermohan Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

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

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Manoj Bajaj, J. (Oral)

Landlord-Ravinder Singh @ Jassi has preferred this civil revision to challenge the order dated 10.05.2022 (Annexure P-1) passed by Civil Judge (Jr. Divn.), Khanna, in civil suit No.252/2020, whereby the application filed by respondent (Tenant) seeking permission to adduce secondary evidence relating to the rent note dated 18.04.1995 was accepted.

The facts in brief leading to the petition are that plaintiff (respondent) filed a suit for possession against the defendant (petitioner) in respect of a shop detailed in para 1 of the plaint (Annexure P-2) by invoking Section 6 Specific Relief Act, 1963 and pleaded that on 18.04.1995, Sawinder Singh father of the plaintiff took the shop on rent from Sohan Singh, father of the defendant at a monthly rent of Rs.800/- and a rent note was also executed between them with a clause of yearly enhancement @ Rs.20/- p.m. Ever since, the commencement of tenancy, rent was being paid regularly to the landlord and after demise of the original parties to the rent deed, the tenancy continued, as the rent tendered by the plaintiff was regularly accepted by defendant and present rate of rent is Rs.1280/- p.m.

The shop was being used for sale/purchase of footwears and the plaintiff had also been paying the electricity charges regularly and the said connection is in the name of grand-father of the defendant. In the year 2018, the respondent/plaintiff constructed another shop and shifted his business there, but kept on using the shop in question as godown by stocking the footwears. As per pleadings, on 06.07.2020, the defendant in connivance with un-identified persons broke the locks of shop and had stolen the material lying therein and upon receiving the said information from Chowkidar Jagar Singh, a case FIR No.0097 dated 07.07.2020, under Sections 380, 457, 447 and 120-B IPC at Police Station City-2, Khanna was lodged by plaintiff against defendant. Through the suit, the plaintiff has prayed for restoring the possession back to the tenant and in support of his plaint, the copy of rent deed, electricity bills and receipts etc were attached.

The suit is being contested by the petitioner/defendant by way of filing the written statement (Annexure P-3), who has raised the preliminary objections relating to maintainability, concealment of material facts, lack of cause of action, *locus standi* etc., and on merits has flatly denied the relationship of landlord and tenant. The registration of FIR at the instance of the plaintiff is admitted, but it is explained that the same is false and defendant has been falsely implicated. In the end, it is prayed that the suit be dismissed.

After completion of pleadings and framing of issues, plaintiff in his evidence, tendered affidavits of Jaspal Singh (PW1/A) and Gulshan Kumar (PW2/A) Annexures P-4 and P-5, respectively and thereafter, moved an application dated 14.12.2021 (Annexure P-6) seeking direction to the defendant to produce the original rent note dated 18.04.1995 and in the

alternative, prayed for permission to adduce secondary evidence relating to the said document. The said application was also contested by petitioner by filing reply (Annexure P-7), but the trial Court vide impugned order dated 10.05.2022 proceeded to accept the prayer of the respondent/plaintiff and allowed him to lead secondary evidence relating to the rent note dated 18.04.1995. Hence this revision petition.

Learned counsel has argued that the impugned order is not sustainable in the eyes of law, as photocopy of a document is not permitted to be adduced by way of secondary evidence. He has further submitted that no such plea that the original rent note is not in possession of the plaintiff was pleaded in the plaint, therefore, after commencement of the trial, the plaintiff cannot be permitted to set up this ground to adduce the secondary evidence. He submits that the impugned order passed by the Civil Judge, (Jr. Divn.), Khanna, District Ludhiana is against the law and in support of his contention, learned counsel has relied upon the decision of Hon'ble Supreme Court passed in "*Ashok Dulichand Vs. Madahavlal Dube and Anr.*", 1975 AIR (SC) 1748 and "*J. Yashoda Vs. K. Shobha Rani*", AIR 2007 SC, page 1721. He prays that the revision petition be accepted and the impugned order be set aside.

Learned counsel for the petitioner has been heard and with his assistance the case file as well as the citations relied upon by him have been gone through.

Before advertng to the merits of the case in hand, this Court deems it appropriate to examine the relevant provisions contained in Evidence Act, 1872, particularly Section 63 Evidence Act, which contains the definition of secondary evidence, and the same reads as under:

*“63 : **Secondary evidence-** Secondary evidence means and includes (1) certified copies given under the provisions hereinafter contained;*

(2) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy and copies compared with such copies; (3) copies made from or compared with the original;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.”

No doubt, as per the provisions of the Evidence Act every party to the suit is required to prove the documents relied upon by it through primary evidence, but the said rule is not absolute and Section 65 recognizes certain circumstances as exception to this rule, and if, the party is able to satisfy the Court that the original document is not in its possession, the secondary evidence can be led to prove the same. Here, it will be useful to reproduce Section 65 of the Evidence Act.

***“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 India to be given in evidence;

(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.”

A perusal of the above provisions makes it absolutely clear that before a party chooses to adduce inferior piece of evidence relating to a document, it has to lay a foundation to satisfy the Court that the document sought to be produced in evidence is unattainable, because of the reasons beyond it's control. It is clearly mentioned in Section 63(2) Evidence Act that copies made from the original by mechanical processes are defined as secondary evidence, therefore, the argument raised by learned counsel that the photocopy of a document does not fall within the definition of secondary evidence is misplaced. In the citation of Hon'ble Supreme Court in Ashok Dulichand's case (supra), the issue of secondary evidence was raised by the appellant, who was an elector and had challenged the election of respondent by setting up the ground of corrupt practices. The documents sought to be adduced by way of secondary evidence was a manuscript of a printed leaflet, which was not signed by any one and it was held by the Hon'ble Supreme Court that the pre-condition required to be satisfied for leading secondary evidence is not satisfied, therefore, the challenge made by

the appellants to the impugned decisions refusing his prayer to lead secondary evidence was upheld. In this decision, the Hon'ble Supreme Court has nowhere held that photocopy of the document cannot be adduced by way of secondary evidence. Similarly, in **J. Yashoda's** case (supra) also, it was specifically observed by the Hon'ble Supreme Court that as clause (a) of Section 65 Evidence Act is not satisfied, and non production of original document is not explained, therefore, permission to lead secondary evidence was denied.

Here, it will be useful to rely upon the decision of Hon'ble Supreme Court in “**Rakesh Mohindra Vs. Anita Beri and others**” **2015(4) RCR (Civil), 1023**, wherein while examining the issue of secondary evidence, the Hon'ble Supreme Court allowed the photocopy of the subject document to be adduced by way of secondary evidence and the relevant observations read as under:

“22. It is well settled that if a party wishes to lead secondary evidence, the Court is obliged to examine the probative value of the document produced in the Court or their contents and decide the question of admissibility of a document in secondary evidence. At the same time, the party has to lay down the factual foundation to establish the right to give secondary evidence where the original document cannot be produced. It is equally well settled that neither mere admission of a document in evidence amounts to its proof nor mere making of an exhibit of a document dispense with its proof, which is otherwise required to be done in accordance with law.

23. In the case of *M. Chandra vs. M. Thangamuthu*, (2010) 9 SCC 712, this Court considered the requirement of Section 65 of the Evidence Act and held as under:-

“47. We do not agree with the reasoning of the High Court. It is true that a party who wishes to rely upon the contents of a document must adduce primary evidence of the contents, and only in the exceptional cases will secondary evidence be admissible. However, if secondary evidence is admissible, it may be adduced in any form in which it may be available, whether by production of a copy, duplicate copy of a copy, by oral evidence of the contents or in another form. The secondary evidence must be authenticated by

foundational evidence that the alleged copy is in fact a true copy of the original. It should be emphasised that the exceptions to the rule requiring primary evidence are designed to provide relief in a case where a party is genuinely unable to produce the original through no fault of that party.

24. After considering the entire facts of the case and the evidence adduced by the appellant for the purpose of admission of the secondary evidence, we are of the view that all efforts have been taken for the purpose of leading secondary evidence. The trial court has noticed that the photocopy of the Exhibit DW-2/B came from the custody of DEO Ambala and the witness, who brought the record, has been examined as witness. In that view of the matter, there is compliance of the provisions of [Section 65](#) of the Evidence Act. Merely because the signatures in some of the documents were not legible and visible that cannot be a ground to reject the secondary evidence. In our view, the trial court correctly appreciated the efforts taken by the appellant for the purpose of leading secondary evidence.”

Now turning back to the facts of the case in hand, it is a specific case set up by plaintiff that the tenancy agreement was executed on 18.04.1995, which was signed by his father and defendant's father, who further specifically mentioned in the application that the rent note is with the defendant. A perusal of the application shows that the first prayer made by the plaintiff is for issuance of directions to the landlord to produce the document and in alternative, he sought leave of the Court to lead secondary evidence in respect of the rent note. Though the Code of Civil Procedure does not contain any specific provision requiring a party to move an application to seek leave of the Court to lead secondary evidence, but as the expression contained in Section 65 Evidence Act makes it compulsory for the party to explain the absence of the primary evidence as a pre condition before leading such evidence, therefore, this can be given at any stage before or when the evidence is being led. Thus, merely because the tenant

it cannot be construed as a material ground to deny him the leave to adduce secondary evidence.

Notably, the nature of the document relied upon by plaintiff appears to be a proximate piece of evidence and would go to the root of controversy involved in the suit, therefore, if the plaintiff adduces the secondary evidence in relation to the said document, it would facilitate the Court to effectively adjudicate the relevant issues, but, if, the plaintiff is prohibited from adducing the said evidence, it would certainly cause serious prejudice to him. Consequently, this Court has no hesitation in holding that the plaintiff has given justifiable explanation to prove the rent note by way of secondary evidence and by virtue of the impugned order, no prejudice is being caused to the defendant, who shall be given ample opportunity to rebut the evidence of the plaintiff.

Resultantly, this Court finds that the impugned order dated 10.05.2022 (Annexure P-1) passed by Civil Judge (Jr. Divn.), Khanna, District Ludhiana does not suffer from any illegality or impropriety, therefore, no interference is called for by invoking revisional jurisdiction.

Dismissed.

08.07.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No