

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5598 of 2019 (O&M)

Date of decision: 13.07.2022

Mohan Singh

...Petitioner

Versus

Malkeet Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. Inderjit Sharma, Advocate
for the respondents.

ANIL KSHETARPAL, J (Oral)

An application filed by the plaintiff for permission to lead the secondary evidence has been dismissed. He wants to produce photocopy of the agreement/contract. He claims that while coming to meet his counsel along with original documents, the same got displaced. The court has dismissed the application. The plaintiff has filed a suit for recovery of Rs.22,00,000/- along with interest @ 18% per annum after paying ad-valorem court fee.

This court after following the judgment passed by the Supreme Court, the Bombay High Court as well previous judgment of jurisdictional Court has held that there is no provision that mandates filing an application in advance for seeking the permission of the Court to lead secondary evidence. In fact, the Bombay High Court after noticing that a wrong practice has developed in the courts, has made strong observations directing

the trial Courts not to insist on filing such application which is not supported by law. Reference in this regard can be made on the judgments passed in *Madan vs. Shankar and others* (RSA-327-1989 decided on 01.11.2018), *Dhanpat vs. Sheo Ram 2016 SCC 209* and in *Civil Revision Application no.82 of 2016 decided on 10.11.2017* by the Bombay High Court.

It has been found that a wrong practice of entertaining application for permission to lead secondary evidence has continued over a period of time, though, it is not backed by any provision under the Code of Civil Procedure, 1908, the Indian Evidence Act, 1872, or under the High Courts Rules and Orders which provides for mandatorily seeking the prior permission of the Court to lead secondary evidence.

The evidence is of two types, namely, primary and secondary. The court after the evidence has been led, can adjudicate as to whether the evidence led is primary or secondary. If the court comes to a conclusion that the evidence, so led, is secondary, the court is required to see whether it fulfills the parameters laid down in the Indian Evidence Act, 1897 with regard to its admissibility. Hence, the filing of an application for permission to lead secondary evidence is not required.

Keeping in view the aforesaid facts, the order under challenge is set aside. The plaintiff (petitioner) shall be permitted to lead evidence and thereafter, the court will decide, in accordance with law.

All the pending miscellaneous applications, if any, are also disposed of.

July 13, 2022
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No