

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6108 of 2019

Date of Decision: 11.05.2022

Bhupinder Singh

... Petitioner(s)

Versus

Vijay Kumar Mahajan and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Harsh Chopra, Advocate
for the petitioner(s).

None for the respondents.

Anil Kshetarpal, J.

1. Case called thrice. The learned counsel representing the respondent No.1 did not come forward to defend the revision petition.

3. The defendant No.1 assails the correctness of the interlocutory order passed by the trial Court while dismissing the application filed by him for permission to lead secondary evidence in order to prove the alleged agreement dated 21.10.2013. The Court has dismissed the application on the ground that the defendant has failed to prove the existence of the agreement dated 21.10.2013 and a Daily Diary Report, recorded with the police complaining the loss of document dated 21.10.2013, has been cancelled.

4. The learned counsel representing the petitioner submits that the Daily Diary Report has never been cancelled.

5. It has been noticed while deciding the Civil Revision No. 2575

that a wrong practice has been developed in the Courts to file applications for permission to lead secondary evidence. The Supreme Court in ***Dhanpat v. Sheo Ram (Deceased) through Legal Representatives and Others (2020) 16 SCC 209*** as well as the Bombay High Court in Civil Revision No. 82 of 2016, decided on 10.11.2017 have already opined that there is no provision for filing an application for permission to lead secondary evidence. The relevant observations, made by the Supreme Court in ***Dhanpat's case (supra)***, are extracted as under:-

“There is no requirement that an application is required to be filed in terms of Section 65(c) of the Evidence Act before the secondary evidence is led. A party to the lis may choose to file an application which is required to be considered by the trial court but if any party to the suit has laid foundation of leading of secondary evidence, either in the plaint or in evidence, the secondary evidence cannot be ousted for consideration only because an application for permission to lead secondary evidence was not filed.”

The relevant observations, made by the Bombay High Court in Civil Revision No. 82 of 2016 (*supra*), read as under:-

“10. This, I regret to say, is a misconception that has now attained the proportions of an epidemic, especially in the Court of Small Causes and in the civil courts. Apparently, none of these courts seems to care that there is no provision in the Code of Civil Procedure 1908 or the Evidence Act for any such application. Nobody seems to care either that there are

reported decisions starting from Indian Overseas Bank v Triokal Textile Industries & Ors., of Vazifdar J (as he then was) directly to the contrary and saying that no such application is maintainable, desirable or even necessary.

11. I have recently set out the law on this and I will say so briefly once again: either secondary evidence is led or it is not led. Either the provisions of Section 65 are met or they are not met. No permission of a Court is required to lead evidence of any kind. No judge in the subordinate judiciary to this High Court will hereafter will insist on any such application under any circumstances whatsoever. I do not think I can put it in any clearer terms than this. Any such order is wholly illegal and liable to be set aside. A copy of this order is now to be circulated to every Civil Judge in the State of Maharashtra. To clarify: in an evidence affidavit under Order 18, a witness may well say of a given document that he cannot prove it by direct evidence and then proceed to adduce the secondary evidence in compliance with Section 65 of the Evidence Act. The trial court is to consider that evidence, viz., the reason given for not leading direct evidence, and the secondary evidence led, and is to then decide whether the secondary evidence led is sufficient. That is all. There is absolutely no question of an application, whether styled as an interim application or a 'MARJI' application, for 'permission' to lead secondary evidence. The Court cannot refuse that permission, and it cannot insist on an

application for any such permission.”

6. Keeping in view the aforesaid facts, the present revision petition is allowed and the order, under challenge, is set aside. The trial Court is directed to permit the defendant No.1 to lead his evidence. At the time of final arguments, the trial Court shall form its opinion as to whether the petitioner has fulfilled the requisites of Section 65 of the Indian Evidence Act, 1872 or not.

(Anil Kshetarpal)
Judge

May 11, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No