

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1076-2017 (O&M)
Date of decision: 20.04.2023

M/S SHALIMAR TOWN PLANNERS PVT LTD ...Petitioner
VS
SHYAMBIR & ORS ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Adarsh Jain, Advocate,
For the petitioner.

Mr. Deepender Singh, Advocate and
Ms. Nidhi, Advocate
For respondent No.5.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 23.01.2017 passed by Learned Civil Judge (Junior Division), Faridabad, whereby in a suit instituted by petitioner for specific performance of agreement to sell, application filed by petitioner/plaintiff under Section 65 of Indian Evidence Act for permission to prove the agreement to sell dated 07.10.2007 and the receipts regarding payment of earnest money by way of secondary evidence, was dismissed.

2. Learned counsel for the petitioner relies on an order passed by a Coordinate Bench of this Court in CR-7787-2016 decided on 22.11.2022 titled *M/s Ansal Properties & Infrastructure Ltd. and another Vs. State of Haryana and others*, which is reproduced hereinbelow:

“An application filed by the plaintiffs for permission to lead secondary evidence has been dismissed by the trial

Court on the ground that the application can be entertained only when the existence, execution and loss of the documents is proved by the party desirous of leading secondary evidence. The plaintiffs wishes to lead secondary evidence in order to prove the collaboration agreement (22.10.1992), supplementary collaboration agreement (22.10.1997) and second supplementary agreement (27.07.2012), power of attorney (22.09.1997) executed by plaintiff no.2 in favour of plaintiff no.1 as also power of attorney (03.01.2008) executed by plaintiff no.1 in favour of Sh. N.K.Sehgal.

“This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

After discussing the various provisions of the Civil Procedure Code, 1908, the Indian Evidence Act, 1872 and the High Court Rules and Orders, this court in Vinod Kumar vs. Satbir Singh (Civil Revision No.2575 of 2020, decided on 03.03.2021) and Madan vs. Shankar and others(RSA- 327-1989 decided on 01.11.2018) has held that there is no particular provision for filing an application for permission to lead the secondary evidence in any of the procedural law. The Bombay High Court, on 10.11.2017, while deciding Civil Revision application No.82 of 2016, directed the trial courts to stop the practice of requiring applications for permission to lead secondary evidence, particularly when it is not supported by any provision of law. Recently, the Hon'ble Supreme Court in Dhanpat vs. Sheo Ram, 2020 SCC Online SC 606, has also, held on the similar lines.

Keeping in view the aforesaid facts, the impugned order passed by the trial Court is set aside, being erroneous. The petition stands allowed. The trial Court is directed to grant the petitioners (the plaintiffs) another opportunity to prove the aforementioned documents. At the time of final hearing, the Court shall firstly examine 'whether the evidence led is primary or secondary?' If it is found that the evidence led is secondary, then the Court shall further examine 'whether such evidence is admissible as per the parameters laid down under Section 65 in the Indian Evidence Act, 1872?'

Disposed of accordingly.

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

3. I am in respectful agreement with the views expressed herein above. In the premise, revision petition is allowed. Learned trial Court shall accord opportunity to petitioner/plaintiff to adduce secondary

evidence in terms of the judgment, *ibid*. Needless to say that at the time of final hearing, the learned Trial Court shall examine whether the same is admissible as per parameters under Section 65 of the Indian Evidence Act.

(ARUN MONGA)
JUDGE

20.04.2023
Vandana

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