

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-289-2023 (O&M)

Date of Decision: 17.01.2023

M/s G.S. Enterprises

.....Petitioner

Versus

RSJ Consumer Products Private Ltd. and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Tribhawan Singla, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for setting aside order dated 05.01.2023 passed by learned Civil Judge (Senior Division), Sangrur, whereby in a suit for mandatory injunction, the application filed by the plaintiff/petitioner for giving permission to prove *Bilties* by way of secondary evidence, has been declined.

2. Given the nature of order being passed, there is no necessity to issue notice to the defendant/respondents as no prejudice would be caused to them. Notice to the respondents is thus dispensed with.

3. I have heard learned counsel for the plaintiff/petitioner and gone through the case file.

4. Learned counsel for petitioner submits that the documents sought to be produced by way of secondary evidence, though is in existence, but the same have already been relied upon by the plaintiff in another proceedings which are sub judice in the Special Court (N.I. Act), South-East District, New Delhi.

5. Ordinarily this Court would not have interfered. However, in the peculiar circumstances, it is borne out from the record, the plaintiff has filed an application before the Court in New Delhi to return those documents so that he can produce the same. While the said application has remained

pending, as a matter of expediency and in the peculiar facts and circumstances of the case, I am of the view that the Ld. Trial Court ought to have allowed the plaintiff to produce the documents by way of secondary evidence subject of course to production of original documents when the same are returned by the Court in New Delhi pursuant to the decision on the application already filed or by producing certified copies thereof. In this context, reference may be had to Section 65 of the Act which permits production of secondary evidence relating to documents, which is as under:-

“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.”

6. The above said provision is self-explanatory and subject to the right of the petitioner later on to produce the original documents relied upon, at this stage he is permitted to produce the photocopies thereof. Needless to say that the production of photocopies shall not be construed to mean that the defendants are not entitled to defend/rebut the same, in case they so feel.
7. Accordingly, the revision petition is allowed and the impugned order is set aside. Petitioner is granted one opportunity to produce the photocopies of documents by way of secondary evidence, as mentioned above.
8. Pending civil miscellaneous applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

January 17, 2023
ashish

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