

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-16145-CII-2018 in/and
CR-4987-2018 (O&M)
Date of Decision: 19.01.2023

Shambhu Dayal

.....Petitioner

Versus

Dev Karan Dass (Deceased) Through LRs and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Krishan Sehajpal, Advocate
for the applicant-petitioner.

Mr. Varun Sharma, Advocate
for respondents No.1(ii)(a) and respondent No.2.

ARUN MONGA, J. (ORAL)**CM-16145-CII-2018**

For the reasons stated, the application is allowed subject to all just exceptions. Persons mentioned in para No.2 of the application are impleaded as legal heirs of respondent No.1-Dev Karan Dass, who is stated to have expired on 03.01.2014 and persons mentioned in para No.3 of the application are impleaded as legal heirs of pro forma respondent No.7-Naresh Kumar, who is stated to have expired in the year-2017.

Registry to take steps accordingly.

CR-4987-2018 (O&M)

Petition herein, *inter alia*, is for setting aside order dated 17.04.2018 (Annexure P-7) passed by learned Additional Civil Judge (Senior Division), Jalandhar, whereby in a suit for dissolution of firm 'M/s. Badri Parshad Dina Nath' and for rendition of accounts, the application filed by the present petitioner/defendant No.5 to lead secondary evidence of compromise/ family settlement dated 24.08.2009 (Annexure P-1), was dismissed.

2. I have heard learned counsel for the petitioner and gone through the case file.

3. Learned counsel for petitioner submits that the documents sought to be produced by way of secondary evidence, though is in existence, but the same is in the possession of the respondents No.1 and 2/plaintiffs themselves.

4. Ordinarily this Court would not have interfered. However, in this case as is borne out from the record, the application was filed by the plaintiffs themselves for giving direction to the defendants to produce original copy of the compromise. Therefore, I am of the view that the Ld. Trial Court ought to have allowed defendants to produce photocopy of the compromise by way of secondary evidence. In this context, reference may be had to Section 65 of the Act which permits production of certified copies of the record by way of primary evidence, 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.”

5. The above said provision is self-explanatory and the petitioner is permitted to produce the photocopy of the compromise by way of secondary evidence on payment of costs to the plaintiffs. Needless to say that the production of photocopy shall not be construed to mean that the plaintiffs are not entitled to defend the same, in case they so feel.
6. Accordingly, the revision petition is allowed and the impugned order is set aside. Petitioner is granted one opportunity to produce the photocopy of the compromise by way of secondary evidence subject to payment of Rs.10,000/- as costs to be paid by defendant No.5 to the plaintiffs.
7. Pending civil miscellaneous applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

January 19, 2023
ashish

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