

M/s Green Estate and Hindustan Residential Estate Plot Holders
Association (Regd.)

....Petitioner

versus

Shri Govind Ram Awana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Adarsh Jain, Advocate for the petitioner.

Mr. Kulbhushan Sharma, Advocate for respondent No.1.

ARUN MONGA, J. (ORAL)

Present revision petition is for quashing impugned order dated 07.09.2015 passed by learned Civil Judge (Senior Division), Faridabad whereby application of petitioner-plaintiff to produce on record original Special Power of Attorney executed by Shri I.S. Bedi in favour of Munna Lal Gupta, has been dismissed.

2. Learned counsel for the petitioner contends that petitioner-plaintiff filed a civil suit seeking decree of declaration to the effect that four sale deeds executed by defendant No.1, alleging to be President of the Association, were null and void and not binding on the rights of plaintiff-society.

2.1. Learned counsel for petitioner further submits that when evidence was being led, petitioner-plaintiff moved an application dated 15.01.2010 (Annexure P-1) seeking permission to lead secondary evidence for proving Special Power of Attorney executed by Shri I.S. Bedi in favour of M.L. Gupta, which was stated to have been destroyed in a fire which broke out on 07.03.2006 and FIR dated 16.03.2006 was registered in that regard. Further contends that vide order dated 11.03.2011 (Annexure P-2), learned trial Court considering the fact that existence

of the document was proved and it was lost, permission to lead secondary evidence was granted. However, at the time of rebuttal evidence, original Special Power of Attorney was located in the record of the Society, which was not destroyed in the fire. Accordingly, application dated 25.05.2015 (Annexure P-3) was filed to lead additional evidence to prove original Special Power of Attorney. Vide impugned order dated 07.09.2015, learned trial Court erroneously dismissed the aforesaid application.

3. I have heard learned counsel for parties and perused the case file.

4. Rules of procedure are handmaid of justice and cannot be allowed to thwart real and substantial justice between the parties. Prejudice would indeed be caused to petitioner unless afforded an opportunity to lead additional evidence.

5. That apart having seen the contents of application seeking permission to lead additional evidence by way of relying on the primary document, I find that reasonable justification has been given for non-production of the document, now sought to be relied upon. No doubt, while filing the earlier application to adduce secondary evidence, it was stated that records of the Society were burnt in a fire which broke out in the year 2006, but it was much later when after filing of suit that while rummaging old records of the Society, the Special Power of Attorney stated to be executed by one Shri Inderjit Singh Bedi, the then President of the Society, was stumbled upon and having got the same, which is duly pleaded in the application for leading additional evidence, in Para-4 thereof, the original document is sought to be relied upon by way of primary evidence.

6. Learned counsel for respondent No.1 (defendant in the suit in question) opposes production of said document, at this stage, stating that it cannot be allowed to fill up lacunae, which have been left at the time of filing of suit.

7. I do not find any substance in the said argument. Para-4 of the application clearly refers to the same very document giving specific particulars,

which was executed in favour of M.L. Gupta. While adducing secondary evidence also, same document had been relied upon. Therefore, as far as factual aspect is concerned, it has been the stand of plaintiff throughout that such document was indeed executed by the then President of the Society. Being so, there is no lacuna existing in pleadings of the plaint, as has been alleged by learned counsel for respondent No.1.

8. Learned counsel for respondent No.1 also points out that a bare cursory look at the document, which is part of Annexure P-3 (application dated 25.05.2015 to adduce additional evidence), shows that it does not bear any date and seems to be a fabricated document.

9. Be that as it may, it is open for respondent No.1 to take objections *qua* documents being fabricated and subject to the same being proved in accordance with law, learned trial Court shall proceed to allow the petitioner to adduce additional evidence.

10. In the premise, impugned order is set aside, subject to costs of Rs.20,000/- payable to respondent No.1. Application seeking to produce additional evidence is allowed. Learned trial Court to proceed further as per proceedings.

11. Disposed of, accordingly.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

February 21, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No