

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1466 of 2021 (O&M)
Date of Order: 01.08.2023

Malkeet Singh Atwal and others

.Petitioners

Versus

Beant Singh Boparai and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Nameru Sharma, Advocate, for
Mr. Sandeep Verma, Advocate
for the petitioners.

Mr. H.P.S.Ghuman, Advocate
for the respondents.

ANIL KSHETARPAL, J

1. The trial court has dismissed the petitioners' application for permission to prove the documents by leading secondary evidence. The Court has held that unless and until the existence of original and its loss is proved by the applicants, the plaintiffs cannot be permitted to lead secondary evidence.

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

3. 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 provision for

filing an application for permission to lead secondary evidence.

4. While deciding Civil Revision Application no.82 of 2016, the Bombay High Court has also condemned such a practice and observed 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."

5. Similarly, the Supreme Court in **Dhanpat vs. Sheo Ram, 2020 SCC Online SC 606** also observed that there is no requirement for filing an application in terms of Section 65(c) of the Evidence Act before the secondary evidence is led. Moreover, in **Madan vs. Shankar and others (RSA-327-1989 decided on 01.11.2018)**, the Court came to a conclusion that there is no provision for filing an application for permission to lead secondary evidence after examining the provisions of the Indian Evidence Act, 1872, the Code of Civil Procedure, 1908 and the High Court Rules and Orders. Thereafter, significantly large number of revision petitions have been decided in the similar manner.

6. Keeping in view the aforesaid facts, the impugned order passed by the trial Court on 27.07.2021 is set aside while directing the trial court to permit the plaintiffs to lead evidence. After the evidence has been led by the petitioners, the trial court while finally deciding the case will be entitled to evaluate such evidence and decide whether the plaintiffs have successfully proved the existence, validity and genuineness of the documents which have been produced by way of secondary evidence.

7. With these observations, the revision petition is disposed of

August 01, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO