

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 7585 of 2019 (O&M)****Date of Decision: 11.08.2023**

Diksha Yadav

... Petitioner(s)

Versus

Chairperson, Panchayat Samiti Block Kanina, District Mahendergarh and

Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Gaurav Mohunta and Mr. Gaurav Gogna, Advocates
for the petitioner(s).

Ms. Vibha Tewari, Assistant Advocate General,
for the respondent No.2 and 3.

Mr. Mayank Yadav, Advocate
for the respondent No.4.

Anil Kshetarpal, J.

1. The plaintiff's application for permission to lead secondary evidence has been dismissed by the trial Court on the ground that the defendants are claiming that no such documents were ever deposited by the plaintiff in her department.

2. Heard the learned counsel 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*

(RSA327-1989 decided on 01.11.2018) has held that there is no provision that mandates 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 Indian Evidence Act, 1872, before the secondary evidence is led. Moreover, in ***Madan's case (supra)***, 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 present revision petition is allowed and the impugned order passed by the Civil Judge (Junior Division), Kanina, on 17.10.2019 is set aside while directing the trial Court

to permit the plaintiff to lead evidence. After the evidence has been led by the petitioner, the trial Court, while finally deciding the suit, will be entitled to evaluate such evidence and decide whether the plaintiff has successfully proved the existence, validity and genuineness of the documents which have been produced by way of secondary evidence.

7. With the observations made above, the present revision petition is disposed of.

8. The miscellaneous application(s) pending, if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

August 11, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No