

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR-3122-2025 (O&M)

Date of decision: 28.05.2025

Tip Top Dry Cleaners and Dyers through
Paramjeet Singh Buttar

...Petitioner(s)

Vs.

Sumitra Dilawari (since deceased)
through LRs and others

...Respondent(s)

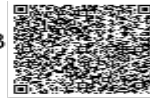
CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Atinderpal Singh, Advocate
for the petitioner.

NIDHI GUPTA, J.

The present civil revision petition has been filed by the petitioner/tenant, under Article 227 of the Constitution of India for setting aside impugned order dated 26.03.2025 passed by court of Id. Rent Controller Amritsar, in ***Rent Petition No. RP-21475/2013*** titled as ***"Sumitra Dilawari Vs. Tip Top Dry Cleaners and Dyers and others"***, vide which the application filed by the respondent/landlord to lead secondary evidence with regard to the Will, has been allowed.

2. Learned counsel for the petitioner submits that the impugned order dated 26.03.2025 deserves to be set aside as the learned trial Court failed to appreciate that the respondent-landlord has never produced the original Will till date. It is submitted that the respondents want to lead prosecution evidence with copy of Will, which



is concealment of original documents. However, the learned trial Court without following due process of law, had allowed the application of the respondents to lead secondary evidence. It is contended that mere assertion of the respondents that they are not in possession of original Will, does not give any right to respondents to file the present application unless they prove the same. Moreover, respondents are neither the owner of the property nor their suit is maintainable. Therefore, present application is nothing but delay tactics and amounts to collecting evidence through Court, which is against the settled principles of law.

3. Learned counsel for the petitioner relies upon judgments passed by this Court in ***“Vijay Kumar Vs. Sham Lal (Deceased) through LRs”***, ***Law Finder Doc Id # 2022624***, and ***“Anil Kumar vs. Smt. Shanti Devi”***, ***Law Finder Doc Id # 1123156***.

4. It is accordingly prayed that the present civil revision petition be allowed; and impugned order dated 26.03.2025 be set aside being against the law as well as evidence on record.

5. No other argument is made by counsel for the petitioner.

6. Heard learned counsel and perused the case file in great detail.

7. I find no merit in the submissions made on behalf of the petitioner.

8. Brief facts of the case are that respondent No.1 filed a Rent Petition dated nil under Section 13 of the East Punjab Urban Rent



Restriction Act No. III of 1949, seeking ejectment of the petitioner from the demised premises (Annexure P-1). During the pendency of proceedings, LRs of respondent No.1 had filed an application dated nil (Annexure P-5) seeking permission to lead secondary evidence with regard to the Will executed by respondent No.1 in favour of respondent No.1(i). In the said application, it was averred that the original Will was misplaced by respondent No.1(i) on 31.12.2024. The respondent No.1(i) had tried to locate the misplaced Will. However, when he could not find it, a complaint was moved to the Police and DDR was registered on 17.01.2025. It was further stated that the said Will was duly registered by the Executant/respondent No.1 before the Sub Registrar and certified copy of the same was in possession of the applicant/respondent No.1(i). As respondent No.1 had expired on 22.11.2013, it was prayed that applicant/respondent No.1(i) be granted permission to lead secondary evidence to the Will executed by respondent No.1 in favour of respondent No.1(i). Reply dated nil (Annexure P-6) was filed by the petitioner to the above said application, stating therein that the Will in question was a forged and fabricated document. Vide the impugned order dated 26.03.2025, learned Rent Controller has allowed respondent No.1(i) to lead secondary evidence in respect of the Will.

9. I find no ground is made out to interfere in the impugned order dated 26.03.2025 as the learned Rent Controller has passed a well reasoned order, relevant part of which reads as under: -

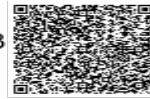


"4. Section 65(c) "Secondary evidence may be given of the existence, condition, or contents of a document in case when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time."

*5. In case titled as **Smt.Sobha Rani Vs. Ravi Kumar 1999(1) R.C.R.(Civil) 1998** has held that "the loss itself pleaded in the application, and the loss is not required to be proved in absolute terms at this stage and accordingly upheld the application of secondary evidence."*

*6. In case titled as **M/s.Racco Enterprises Vs. Vivek Kapila & Ors 2011(4) CivCC 503** has held that "As per Section 63 of the Act, copy made from the original and compared with the original is one of the form of secondary evidence. Plaintiff intends to prove the agreement in dispute by producing and proving it cannot be said and that the same cannot be taken into evidence as the secondary evidence."*

*7. In case titled as **Amrik Singh Vs. Surjeet Kaur 2013(2)PLR 657 (P&H)** has held that "Whether all or any of circumstances existed for production of secondary evidence is essentially a matter of evidence and not a rule of essential pleadings. Whether document was lost or not can only be spoken to by a party and correctness of version made is to be tested in cross examination. Fact that party who was giving evidence of its loss had not referred to it in its pleading will be a matter for cross examination and cannot make possible an inference that original could not have been lost. It is required to be established at a trial or at cross examination and cannot be pre-judged."*



8. In view of above said judgments, application in hand is allowed subject to proof of its existence or loss. However, anything observed or said, while deciding present application, shall have no effect on merits of present main case. Entire petitioner evidence on behalf of the petitioner/applicant be also concluded on 01.04.2025 as last opportunity. It is further made clear that no further adjournment shall be given for the same purpose.”

10. Learned counsel for the petitioner has been unable to controvert or dispute the above said factual and legal position as recorded by the learned Rent Controller in passing the impugned order.

11. Further, Petitioner can derive no benefit from the relied upon judgments passed in ***Vijay Kumar’s case (supra)*** and ***Anil Kumar’s case (supra)***, as the same are distinguishable on facts and law.

12. The present civil revision petition, accordingly, stands **dismissed**.

13. Pending application(s) if any also stand(s) disposed of.

28.05.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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