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2026.PHHC.089203



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR-4910-2026

Date of Decision: 01.07.2026

Firdous

..... Petitioner

Versus

Mohd. Irfan

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Mohd. Salim, Advocate
for the petitioner.

HARSH BUNGER J. (ORAL)

Prayer in the present revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 23.04.2026 passed by the learned Civil Judge (Senior Division), Nuh, whereby an application filed by the respondent/plaintiff for permission to lead secondary evidence has been allowed.

2. Briefly, respondent (Mohd. Irfan) filed a suit for specific performance of agreement to sell dated 02.07.2021, on the plea that the present petitioner (Smt. Firdous) had executed the said agreement for a sum of Rs.48,00,000/- and that she had received a sum of Rs.10,00,000/- as earnest money. The said agreement is averred to have been executed and the earnest money being accepted in the presence of witnesses. The target date for execution and registration of the sale deed is claimed to

have been fixed for 04.11.2021.

2.1 According to the plaintiff-respondent, on 04.11.2021 he had presented himself in the office of Sub Registrar, Nuh, to get the sale deed executed and registered upon payment of balance sale consideration, in terms of the above claimed agreement to sell dated 02.07.2021. However, it is alleged that the present petitioner did not come present.

2.2 It is the case of the plaintiff that on 22.11.2021, the present petitioner received another sum of Rs.23,00,000/- from the plaintiff-respondent in the presence of witnesses and even the receipt was executed in that regard with the promise that petitioner-defendant would execute and register the sale deed as and when called upon by the plaintiff-respondent.

2.3 It is alleged that present petitioner failed to perform her part of the contract, whereas the plaintiff-respondent was ready and willing to perform his part and even a legal notice dated 26.07.2024 is stated to have been served upon the present petitioner, calling upon the petitioner to execute the sale deed. Since the petitioner failed to do so; accordingly, suit for specific performance was filed. In the suit itself, following averments have been made in paragraph No.6:-

“6. That on 17-7-2024 the original agreement to sale and receipt of earnest money dated 02.07.2021 has been lost from plaintiff in front of the Old Tehsil Premises Nuh, when plaintiff was going to Distt court Nuh to take legal opinion from advocates for filing a suit against defendant. A DDR No.18 dated 18-7-2024 has been lodged by plaintiff in this regard in PS City Nuh.”

2.4 It appears that the present petitioner appeared in the suit and contested the same by filing a written statement *inter alia* on the plea that

the petitioner has never executed any agreement in favour of any person including the plaintiff and even the receipt of any amount from the plaintiff has been denied. The other averments made in the plaint have also been controverted by the petitioner.

2.5 Subsequently, it appears that the plaintiff-respondent filed an application under Sections 58 and 60 of Bharatiya Sakshya Adhiniyam (BSA), 2023, seeking permission from the trial Court to lead secondary evidence, on the plea that the original agreement to sell and receipt of earnest money dated 02.07.2021 has been lost and in that regard, DDR No.18 dated 18.07.2024 already stands lodged by the plaintiff at Police Station City, Nuh and that the photostat copies of the said agreement to sell as well as the receipt of earnest money were available with the plaintiff-respondent.

2.6 The present petitioner contested the aforesaid application for leading secondary evidence by filing her reply. The learned trial Court after considering the matter, allowed the application submitted by the plaintiff-respondent for leading secondary evidence, in respect of agreement to sell dated 02.07.2021 and also the receipt of payment dated 02.07.2021, vide impugned order dated 23.04.2026.

3. Feeling aggrieved, the petitioner has filed the present revision petition before this Court.

4. I have heard the learned counsel for the petitioner and perused the paper book with his able assistance.

5. Apparently, the respondent had filed a suit for specific performance of agreement to sell dated 02.07.2021 against the petitioner, wherein a specific plea has been taken that the plaintiff-respondent has paid an amount of Rs.10,00,000/- as earnest money to the present

petitioner and has further paid Rs.23,00,000/- to the petitioner-defendant. In the plaint itself in paragraph No.6, the plaintiff has pleaded the loss of original agreement to sell as well as receipts of payments, regarding which even the DDR No.18 dated 18.07.2024 stands lodged by the plaintiff at Police Station City, Nuh. Learned trial Court has allowed the application submitted by the plaintiff for leading secondary evidence by placing reliance upon the judgment passed by this Court in the case of '***Darshan Lal Vs. Gurmail Singh and others***' 2018 (3) PLR 181, holding that permission to lead secondary evidence cannot be refused on the ground that evidence regarding loss of document is not available and that the application for secondary evidence can always be allowed, subject to proof of original and loss thereof. Learned trial Court allowed the application for leading secondary evidence vide order dated 23.04.2026 by clearly observing that in case the secondary evidence is not allowed, the same shall cause great prejudice to the plaintiff; however, at the same time, it has been held that plaintiff would be liable to prove the said documents i.e., agreement to sell dated 02.07.2021 and also the receipts of payments dated 02.07.2021, in accordance with law by leading cogent evidence.

6. Learned counsel for the petitioner has been unable to point out any illegality or perversity in the impugned order, which may call interference by this Court, in the present revision petition. The learned trial Court has clearly observed that the permission to lead secondary evidence is being granted to the plaintiff, subject to the plaintiff proving the documents by leading cogent evidence, in accordance with law and also that the petitioner would be given ample opportunity to cross-examine the witnesses of the plaintiff on the aforesaid agreement and

receipts.

7. In my considered view, the impugned order dated 23.04.2026 is quite fair and justified in the peculiar facts and circumstances of this case; therefore, it does not call for any interference by this Court.

8. In view of the above, I find no merit in the present revision petition and the same is dismissed accordingly.

9. All pending application(s), if any, shall also stand closed.

01.07.2026

Pd

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No