IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMO No. 650 of 2025
Decided on : 11.11.2025

Shri Vinod Kalia

…Petitioner

Versus

Bhagwati Public Aushdhalaya through Shri Rattan Chand Kalia

…Respondent

Coram
Hon'ble Mr. Justice Ajay Mohan Goel, Judge
Whether approved for reporting?[1] Yes

For the petitioner : Mr. Nitin Soni, Advocate.

For the respondent : Notice not issued.

Ajay Mohan Goel, Judge *(Oral)*

By way of this petition, the petitioner has assailed order dated 18.07.2025, passed by learned Senior Civil Judge-II, Dehra, District Kangra, H.P., in CMA No. 1096/24, in terms whereof, an application filed by the petitioner herein, under Section 65 of the Indian Evidence Act (hereinafter referred to as 'the Evidence Act') to lead secondary evidence, was dismissed.

2. Having heard learned counsel for the petitioner and having perused the impugned order, this Court is of the

1*Whether reporters of the local papers may be allowed to see the judgment?*

considered view that there is no infirmity in the order.

3. The suit between the parties is to the effect that the plaintiff has filed a suit for possession against the present petitioner by way of ejectment from the suit land on the premise that the petitioner is the owner of the premises and the defendant is the tenant. In terms of the record, though the defendant/present petitioner does not deny his tenancy over the suit premises, but according to him, the plaintiff is not the owner of the suit land. The suit is filed in the year 2015 and since the year 2019, the case is being listed for recording of the evidence of the defendant i.e. the present petitioner and in terms of the record, till the date of the passing of the impugned order, only one witness was examined by the defendant.

4. Now coming to the application filed under Section 65 of the Evidence Act, in terms of this application, the petitioner had sought leave of the Court to lead secondary evidence to prove a photocopy of the rent agreement dated 17.11.1991, which according to the petitioner was executed between him and one Sh. Roshan Lal, who was in possession of the original agreement and had lost the same.

5. In terms of the order under challenge, this application of the petitioner was rejected by the learned Trial Court, *inter alia,* by holding that along-with the application, no document etc., like an affidavit of Roshan Lal was appended to demonstrate that indeed there was any agreement entered into between Roshan Lal and the present petitioner and that Roshan Lal was in possession of the original, which was lost. Learned Trial Court also took note of the fact that the case was being listed for recording the statement of defendant witnesses since 29.08.2019 and the application was filed on 17.08.2022 and the defendant had examined only one witness, who was not connected with agreement dated 17.11.1991 and had indeed deposed that the defendant was the owner of the shop. Learned Trial Court also held that there was no material on record to demonstrate that agreement dated 17.11.1991 was a certified copy or copies made from the original by mechanical process, which ensures the accuracy of the copy and copies. Learned Trial Court also held that the execution of agreement dated 17.11.1991 was denied by the plaintiff and in these circumstances the application could not be allowed.

6. This Court is of the considered that the findings returned by the learned Trial Court call for no interference. In terms of the provisions of Section 65 of the Evidence Act, secondary evidence can be allowed to be led provided the conditions mentioned therein are met. The conditions which are mentioned in Section 65 of the Evidence Act, *inter alia,* are that a party can be allowed to lead secondary evidence if the original is shown to be in possession or power of the person against whom such document is sought to be proved or any such person out of reach or not subject to the process of Court or when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representatives etc. or when the original has been destroyed or lost or when the party offering evidence of its contents cannot for any other reason not arising out of its own default or neglect, produce it.

7. Now in terms of the record, the existence of the document which the petitioner intends to prove by way of secondary evidence has neither been admitted by the plaintiff nor it is the case of the defendant that it is in possession of the

plaintiff. The contention of the petitioner is that original document was in possession of one Roshan Lal with whom the petitioner had executed the same and Roshan Lal had lost it. Now as has been observed by the learned Trial Court, a perusal of the record demonstrates that along-with the application filed under Section 65 of the Evidence Act, nothing was appended to demonstrate that indeed the original document was in possession of Roshan Lal, who had lost it. Not even an affidavit of Roshan Lal to this effect was appended. Nothing prevented the petitioner to examine Roshan Lal as his witness. The contention that Roshal Lal is an aged person, cannot come to the rescue of the petitioner because if that was the case, the petitioner could have had moved an appropriate application to have the statement of Roshan Lal recorded by the appointment of a Commissioner. All this demonstrates that the filing of the application was not only outside the purview of Section 65 of the Evidence Act but was also a ploy to delay the case as it could not be demonstrated that indeed the application was filed after 3 years since time was being granted to the defendant/petitioner to lead evidence.

8. Therefore, in light of the above observations, as this Court finds no perversity in the impugned order, the petition is dismissed. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

November 11, 2025
(Shivank Thakur)