

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 531 of 2017.

Reserved on : 21st May, 2018.

Date of Decision: 31st May, 2018.

M/s ALPAR Appliances

.....Petitioner/defendant.

Versus

Leela Dutt

.....Respondent/Plaintiff.

Coram

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting? Yes.

**For the Petitioner: Mr. G.C. Gupta, Senior Advocate
with Ms. Meera Devi, Advocate.**

For the Respondent : Mr. P.S. Goverdhan, Advocate.

Sureshwar Thakur, Judge.

During the pendency of the plaintiff's suit, for rendition of a decree for permanent prohibitory injunction, for, restraining the defendant, from, causing interference, damage and encroachment, vis-a-vis, the suit khasra numbers, an application, cast under the provisions of Section 65 of the Indian Evidence Act, was, instituted before the learned trial Court, by the defendant/applicant/petitioner

herein, wherein, it sought leave of the Court, to, tender into evidence, a, photo copy of the general power of attorney, as, bestowed by the applicant, upon one Krishan Kumar, on the ground of original thereof, being not traceable, despite, best apt endeavours, hence, made by the applicant, for, locating it.

2. The application was contested, by the plaintiff/respondent herein. The contest was anvilled, upon, the factum, of, prior thereto, the conditions, occurring, in the provisions, of Section 63 of the Indian Evidence Act, requiring theirs being meted the completest satisfaction, and, the application being moved with an ulterior motive, merely, for prolonging or protracting the trial of the suit.

3. The learned trial Court, upon, considering the respective contentions, of the parties, declined, the apposite leave, to the applicant/petitioner herein, (i) the reason which stood assigned by the learned trial Court, was, anvilled, upon, want of lodging of FIR, and, rapat by the applicant/petitioner herein, for, hence the applicant prima facie establishing qua it being lost or being untraceable, (ii) thereupon, it concluded, of, with the mandate, of apposite clause (3) of Section 65, of the Indian Evidence Act, rather

foisting, an imperative condition qua emanations, of, prima facie, proof qua the original rather being lost or destroyed, condition whereof, rather remaining not accomplished to the completest, hence, it declined, the apposite leave to the applicant/petitioner herein. The petitioner herein/defendant being aggrieved therefrom, hence, has instituted the instant petition, before this Court.

4. Primarily, the defendant/petitioner herein, was being sued, through, one Krishan Kumar, and, it appears that the aforesaid Krishan Kumar, was, watching and taking care, of the interest, of the defendant, in the apt litigation, visibly under an apposite power of attorney, executed in his favour by the defendant. Consequently, hence, for the plaintiff, to, maintain the lis, against, the defendant, he ought not be objecting vis-a-vis the apposite leave being granted, by the learned trial Court, qua, the photo copy, of, the original general power of attorney, hence, being tendered into evidence. Dehors, the above necessity, of the apposite leave, being granted qua the relevant purpose, (i) the learned trial Court, while, declining the espoused relief vis-a-vis the applicant, availed, it, upon, with no rapat or FIR being lodged, hence per se, it, being not inferable of the original

GPA being lost or destroyed, hence it pronounced a disaffirmative verdict, upon the apposite application. The afore assigned reason, by the learned trial Court, is, though *stricto sensu*, hence, falling within the ambit of the apposite clause (c) of Section 65 of the Indian Evidence Act, provisions whereof stand extracted hereinafter:-

“(c) 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;...”

(ii) nonetheless, the making, of, a strict construction thereto besides assigning any connotation, to the phrase “or lost” qua hence there being a statutory enjoined concomitant necessity, qua, a rapat or an FIR, being lodged, may, ultimately erode, the spirit, and, the worth of the aforesaid provision, as the phrase “or lost”, does not, necessarily embody therewithin, the factum of its being provenly stolen, (iii) whereupon, alone, there would, arise a necessity, of lodging of an FIR, and, a rapat with the police station, rather it also embodies, within its ambit, the factum of its sudden disappearance, or it, by sheer inadvertence, hence, being misplaced, by the litigant concerned, hence, the original being untraceable. The assigning of the aforesaid, parlance,

to the phrase "or lost", and, when pleadings in consonance therewith, also occur in the apposite application, thereupon, it was improper for the learned trial Court, to, insist, of, there being any prior thereto, dire necessity, of the applicant, hence lodging any apt FIR or a rapat.

5. Furthermore, the learned counsel appearing, for the respondent/plaintiff, has, contended that the apt prior thereto provisions, borne, in Section 63 of the Indian Evidence Act, provisions whereof, stand extracted hereinafter:-

"63. Secondary evidence.—Secondary evidence means and includes—

(1) Certified copies given under the provisions hereinafter contained1;1;"

(2) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) Copies made from or compared with the original;

(4) Counterparts of documents as against the parties who did not execute them;

(5) Oral accounts of the contents of a document given by some person who has himself seen it. Illustrations

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original."

also enjoin meetings, of, complete accomplishment thereto. However, apt complete satiation, is meted to the apposite sub section (2), of Section 63, of the Indian Evidence Act, given, a photo copy, coming within, the apt statutory ambit of its preparation, occurring, by mechanical process, from the original, sequel thereof is, of, the declining, of the apposite leave, being thoroughly inappropriate, AND, arising from a gross misapplication, of, mind, by the learned trial Court.

6. For the foregoing reasons, the instant petition is allowed and the order impugned before this Court is quashed and set aside. In sequel, the application preferred by the petitioner herein, before, the learned trial Court, under the provisions, of, Section 65 of the Indian Evidence Act, is allowed, and, the petitioner is permitted, to, prove the photo copy of power of attorney, by adducing it, as secondary evidence thereof. The parties are directed to appear, before, the learned trial Court, on 11th June, 2018. However, it is made clear that the observations made hereinabove, shall have no bearings on the merits of the case. No order as to costs. All pending applications also

stand disposed of. Records, if received, be sent back forthwith.

31st May, 2018
(jai)

(Sureshwar Thakur)
Judge.