

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.4918 of 2014 (O&M)
Date of decision:16.11.2015

Rajpal @ Pale Ram

... Petitioner

Vs.

Baljeet Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Amit Kumar Goyal, Advocate
for the petitioner.

Mr. Rajbir Sehrawat, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

Challenge in the present petition is to the impugned orders dated 29.08.2013 and 05.07.2014, whereby, application filed by the petitioner-defendant for reviewing the order and not permitting the respondent-plaintiff to lead rebuttal evidence in the absence of rebuttal issue, has been declined.

Mr. Amit Kumar Goyal, learned counsel appearing on behalf of the petitioner submits that as per issues, there is no rebuttal issue as onus to seek declaration was on the plaintiff, which is being sought to be discharged by seeking rebuttal evidence. In the absence of rebuttal issue, rebuttal evidence is not permissible. In

support of his aforesaid contention, he relied upon the Division Bench judgment of this Court in **Suresh Kumar and others vs. Joginder Singh, 2012(2) RCR (Civil) 129**. He further submits that the orders impugned are illegal and perverse, therefore, not sustainable in the eyes of law.

Mr. Rajbir Sehrawat, learned counsel appearing on behalf of the respondent-plaintiff submits that as per provisions of Order 18 Rule 2(3) of the Code of Civil Procedure, the petitioner-defendant has to lead evidence to rebut the evidence led by the respondent-plaintiff as it cannot be said to be rebuttal evidence. He further submits that it is subsequent event which is essential and necessary for adjudication of the suit.

I have heard learned counsel for the parties and appraised the paper book.

It would be apt to reproduce the issues which read thus:-

- “1. Whether the plaintiff is entitled to the relief of declaration and permanent injunction as prayed for? OPP*
- 2. Whether the suit is not maintainable in the present form? OPD*
- 3. Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD*
- 4. Whether the suit of the plaintiff is time barred? OPD*
- 5. Relief.”*

On perusal of the issues, it is apparent that no rebuttal

issue has been framed. In case, the plaintiff wanted to bring on record certain events which have occurred during the pendency of the suit, much less, subsequent events, the same cannot be said to be lead in rebuttal evidence as has been ordered. The plea of Mr. Sehrawat that order dated 14.03.2013, vide which, the respondent-plaintiff has been granted permission to lead evidence, the present revision petition is not maintainable, much less, is not sustainable. I am of the view that plaintiff cannot be permitted to lead evidence in the manner and mode as has been done. At the best, he could have moved an appropriate application in accordance with law. The impugned orders in dismissing the application, as well as, reviewing the order dated 29.08.2013 are not sustainable for the reasons stated above, much less, the orders have been passed exceeding jurisdiction, thus, the same are set aside. Accordingly, the revision petition stands allowed.

(AMIT RAWAL)
JUDGE

November 16, 2015
savita