

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

**Civil Revision No.5309 of 2015
Date of Decision: 18.09.2015**

Janmeja Singh

....Petitioner

Vs

Satnam Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Jai Bhagwan, Advocate
for the petitioner.

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

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 04.08.2015 (Annexure P-7) passed by Civil Judge (Jr. Divn.), Malerkotla vide which prayer of the plaintiff for examining handwriting and fingerprint expert in rebuttal has been declined.

[2]. Plaintiff/petitioner filed suit for recovery of Rs.16 lacs i.e. Rs.10 lacs on the basis of pronote and receipt dated 08.05.2007 and Rs.6 lacs towards interest from 08.05.2007 to 07.11.2009 @ 2% per month along with *pendente lite* and future interest @ 2% per month from the date of filing of the suit. Further a decree for injunction has also been sought, restraining the defendant from alienating 1770/44240 share out of land situated in the village

Bullapur, Tehsil Malerkotla.

[3]. Plead case of the plaintiff is that Ranjit Singh S/o Harnek Singh (father of defendant) took a cash loan of Rs.10 lacs from the plaintiff on 08.05.2007 and executed a pronote and receipt dated 08.05.2007. Pronote and receipt were scribe by Kuldeep Singh at the instance of Ranjit Singh who signed the same in the presence of Harpal Singh and Kuldeep Singh as marginal/attesting witnesses.

[4]. Defendant contested the suit and filed written statement and controverted the allegations of plaint. He denied the factum of taking any loan by Ranjit Singh and also denied execution of pronote and receipt. Pronote and receipt dated 08.05.2007 have been claimed to be forged, fabricated and without consideration. Trial Court framed the following issues:-

- “1. *Whether Ranjit Singh, predecessor in interest of defendant borrowed an amount of Rs.10,00,000/- from the plaintiff and executed a pronote and receipt dated 8.5.2007 in lieu thereof in favour of the plaintiff? OPP*
2. *Whether the pronote and receipt is a false, forged, fabricated and without consideration document? OPD*
3. *Whether the plaintiff is entitled to the decree for recovery, as prayed for? OPP*
4. *Whether the plaintiff is entitled for the decree of permanent injunction, as prayed for? OPP*
5. *Whether the suit is not maintainable? OPD*

6. *Relief.”*

[5]. Apparently, onus of issue No.1 was on the plaintiff. Bare reading of issues No.1 and 2 gives different onus. Issue No.2, according to defendant is covered under issue No.1 and there was no necessity of framing issue No.2.

[6]. Plaintiff led evidence in affirmative. Defendant led evidence on issue No.2. Defendant examined handwriting and fingerprint expert and exhibited his report as Ex.D-4, wherein it has been opined that disputed signatures mark Q1 to Q4 have been compared with standard signatures mark S-1 and S-3 and were found to be different.

[7]. Plaintiff moved an application to examine handwriting and fingerprint expert to rebut the evidence of the defendant and for proving the factum of pronote and receipt to be genuine documents. The application was moved for examining handwriting and fingerprint expert in rebuttal and also for permission to take photograph of the signatures of Ranjit Singh by an expert. Trial Court dismissed the application on the ground that handwriting and fingerprint expert cannot be allowed to be examined in rebuttal as this evidence was within the knowledge of the petitioner at the time of leading evidence in affirmative. The plea was specifically taken by the defendant in the written statement that pronote and receipt are forged and fabricated documents and the same are without consideration. Once the plea of the defendant was known to the plaintiff, he was supposed to lead

evidence in affirmative.

[8]. Learned counsel for the petitioner has argued in terms of Order 18 Rule 3 CPC, wherein the plaintiff has a right to lead evidence in rebuttal even with regard to an issue the onus of which was initially upon him.

[9]. I have considered the arguments of both the sides.

[10]. It is not a case where plaintiff came to know about the stand of the defendant from evidence led by the defendant, rather consistent stand of the defendant in the written statement was that Ranjit Singh never availed any loan, nor executed pronote and receipt and the pronote and receipt are forged and fabricated documents. In view of aforesaid, subsequent report of expert got adduced by the defendant is in consonance with his stand in the written statement and that does not give any premium to the plaintiff to infer that, now he has acquired knowledge about the case of the defendant. Expert evidence as required to be led in affirmative so as to give ample opportunity to the opposite party to rebut the same in his defence. Even though onus of the issue keeps on changing, but here the onus of issue No.1 should have been discharged by the plaintiff in view of stand taken by the defendant in the written statement.

[11]. Since two distinct issues were framed in the form of issues No.1 and 2, fastening onus on both the parties respectively, therefore, shifting of onus *inter se* between the parties in respect of

both the issues will not suffice to serve the purpose that the plaintiff at this stage would be legally entitled to rebut expert evidence of the defendant in rebuttal thereto by all means of his expert.

[12]. Learned counsel for the petitioner has relied upon **Kashmir Kaur vs. Bachan Kaur, 2000 (2) RCR (Civil) 133, Pawan Kumar and another vs. Vijay Kumar and others, 2011(2) CivCC 255, Jugraj Singh etc vs. Darshan Singh etc., 2000(1) CivCC 119** and on the strength of same it is submitted that if once initial onus of issue No.1 is discharged by the plaintiff, then the same shifts upon the defendant and the plaintiff was not required to examine handwriting and fingerprint expert initially, however with the examination of expert by the defendant, the onus has again shift upon the plaintiff and he can discharge the same by examining his handwriting expert under Order 18 Rule 17-A CPC i.e. additional evidence in rebuttal. The case in hand has slight deviation on facts. It is not a case of single issue framed by the trial Court.

[13]. A Division Bench of this Court in **Surjit Singh vs. Jagtar Singh, 2007(1) RCR (Civil) 537 (P&H) (DB)** interpreted the provision in terms of Order 18 Rule 3 CPC and examined the scope and ambit of right of the plaintiff to lead evidence in rebuttal on the issue, the onus of which was on the plaintiff. The Division Bench held that the party cannot be permitted to lead evidence on the issue for which burden of proof was on that party. Reference can be made to para 15 of the judgment:-

“15. In our opinion, Order 18, Rule 3 of the CPC would not give a right to the plaintiff to lead evidence in rebuttal on issues in which the onus of proof is on the plaintiff. Accepting such an interpretation would be to ignore a vital part of Order 18, Rule 3 of the CPC. The rule clearly postulates that "the party beginning, may, at his option, either produce his evidence on these issues or reserve it by way of answer to the evidence produced by the other parties". No matter, how liberally a provision in the statute is required to be interpreted, by interpretation it cannot be amended. Whilst construing a statutory provision the Court cannot reconstruct it. The rule consciously provides the parties with an option either to produce the evidence in support of the issues or to reserve it by making a statement to that effect. The statement itself may well be liberally construed to avoid any unnecessary technical obstacles. One such example has been given by the Division Bench in the case of *Smt. Jaswant Kaur* AIR 1983 P & H 210 (supra). It has been held that if a statement is made by the Advocate for the plaintiff that "the plaintiff closes its evidence in the affirmative only", the same would be read to mean that the plaintiff had reserved its right to lead evidence in rebuttal. We are, therefore, unable to agree with the observations made by the learned single Judge in the case of *Kashmir Kaur* (supra) that he is entitled to lead evidence in rebuttal as a matter of right. In our opinion, this observation runs contrary to the observations of the Division Bench in *Jaswant Kaur's* case (supra). The Division Bench has even fixed the maximum time on which the plaintiff has to exercise his option to reserve the right to lead evidence in rebuttal. It has been clearly held that such a reservation has to be made at the time of the close of the evidence of the plaintiff. We are also unable to agree with

the observations of the learned single Judge in the case of Punjab Steel Corporation AIR 2001 P & H 331 (supra). In that case the plaintiff sought to lead evidence in rebuttal, after the close of the evidence of the defence. At that stage, the plaintiff cannot be permitted to reserve the right to lead evidence in rebuttal. The observations of the learned single Judge run contrary to the law laid down by the Division Bench in the case of Smt. Jaswant Kaur (supra). No doubt, the Division Bench clearly lays down that an overly strict view cannot be taken about the modality of reserving the right of rebuttal. But at the same time, it has been held that the last stage for exercising option to reserve the right of rebuttal can well be before the other party begins its evidence. We are in respectful agreement with the aforesaid observations of the Division Bench in the case of Jaswant Kaur (supra) and R.N. Mittal, J. in National Fertilizers Ltd. (supra)."

[14]. Again in **Jagdev Singh and others vs. Darshan Singh and others, 2007 (1) RCR (Civil) 794**, the view was reiterated by the Division Bench of this Court by relying upon earlier Division Bench's judgment i.e. **Surjit Singh's** case (supra). It was reiterated that the plaintiff cannot as a matter of right lead evidence in rebuttal on issues, the onus of proof of which is on the plaintiff. Para No.6 of the judgment reiterated the view of **Surjit Singh's** case (supra) as reproduced in earlier part of the judgment.

[15]. The Single Bench of this Court, while relying upon both the aforesaid judgments rendered by the Division Bench held that there is difference between rebuttal evidence and the additional evidence. Additional evidence is with respect to the fact which was not within

the knowledge or which could not be known to the party despite of due diligence. However, in case of rebuttal, the right is with respect to an issue which was already within the knowledge of the party and the party had reserved its right to lead evidence in rebuttal. The party cannot be permitted to lead evidence in rebuttal to fill up lacuna in its evidence. The judgment rendered by the Single Bench in **Smt. Kashmir Kaur's** case (supra) has been over ruled regarding the point of leading evidence in rebuttal as a matter of right in **Surjit Singh's** case (supra). Question of reserving right to lead evidence in rebuttal assumes significance in view of interpretations given by different courts. The controversy with regard to the present issue again came before the Division Bench of this Court in **Avtar Singh v. Baldev Singh, 2015(1) PLR 230**. The Division Bench, while relying upon **Surjit Singh's** case (supra) and **Jagdev Singh's** case (supra) held that the plaintiff cannot lead evidence in rebuttal without reserving the right of rebuttal. In such an eventuality in terms of Order 18 Rule 3 CPC his right to lead evidence in rebuttal will be forfeited.

[16]. Similarly issue No.2 was also framed by the trial Court that whether pronote and receipt is false and fabricated document and are without consideration? Onus of this issue was on the defendant. Defendant led evidence on this issue. It cannot be segregated to mean that the onus discharged by the defendant on issue No.2 would mean to cast further onus of issue No.1 upon the plaintiff. Even otherwise the case of **Kashmir Kaur** (supra) cited by the

petitioner relates to an application filed under Order 18 Rule 17-A CPC. Nothing has been shown from the record that the plaintiff reserved his right to lead evidence in rebuttal while closing his evidence in affirmative. The second judgment cited i.e. **Pawan Kumar and another's** case (supra) started with the observation that the plaintiff is not allowed to lead evidence in rebuttal, once execution of agreement is denied by the defendant. It was only on account of the fact that one of the attesting witness denied his signature and in that eventuality it was held that to contradict statement of additional witness examination of handwriting and fingerprint expert became necessary. The said judgment also operates in different background.

[17]. **Jugraj Singh etc.**'s case (supra) is also having background of attesting witness examined in affirmative evidence wherein it was held that in the event of denial of his signature by the attesting witness, the Court found the plea of adducing evidence in rebuttal to be sustainable. None of the aforesaid case was of the background that when the defendant has specifically denied the factum of execution of document and a specific issue was framed to that effect fastening onus on the defendant himself and thereafter the permission was given to the plaintiff to lead evidence in rebuttal.

[18]. In view of facts involved in the present case, **Ram Kumar vs. Raj Kumar and others, 2014(3) CivCC 453** holds the field wherein the proposition laid down squarely covers the controversy in issue. Since the onus to prove issue No.1 is on the plaintiff himself,

therefore, he is not entitled to lead evidence in rebuttal in respect of issue, the onus of which is upon him.

[19]. Having considered the statements made, I am of the view that the plaintiff is not entitled to lead evidence in rebuttal in respect of issue, the onus of which was on the plaintiff himself. Consequently, this revision petition is found to be bereft of merits and the same is dismissed.

September 18, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**