

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

**CR No.5872 of 2015 (O&M)
Date of decision: 29.09.2015**

Chander Pehalwan @ Chander

... Petitioner

Vs.

Sandeep and others

... Respondents

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. Sanjay Vij, Advocate
for the petitioner.

Mr. Pankaj Bhardwaj, Advocate
for respondent No.5/caveator.

AMIT RAWAL J. (Oral)

Challenge in the present petition is to the impugned order dated 20.08.2015, whereby, application filed by the petitioner-plaintiff seeking permission of the Court, to lead evidence in rebuttal, to the one led by the defendants, by way of additional evidence, has been rejected.

Mr. Sanjay Vij, learned counsel appearing on behalf of the petitioner-plaintiff submits that both the parties had concluded their evidence in affirmative. After that defendant had closed the evidence, however, an application for leading additional evidence to produce the handwriting expert at the behest of defendants was filed. The said application was allowed and the order passed thereon had

attained finality. The defendants availed the right to lead evidence by way of additional evidence. Keeping in view such fact, application, Annexure P-2 was filed seeking indulgence of the trial Court, to allow the petitioner-plaintiff, to examine the handwriting expert to take photographs, in order to rebut the additional evidence of the defendants. It is the said application which has been dismissed. He further submits that the trial Court has committed illegality and perversity in not appreciating the provisions of law.

Mr. Pankaj Bhardwaj, learned counsel appearing on behalf of respondent No.5/caveator submits that as per provisions of Order 18 Rule 3 CPC, once there is no rebuttal issue, the plaintiff cannot be permitted to lead evidence, by way of rebuttal since the defendants had already examined DW1, in this respect, therefore, the application, Annexure P-2, seeking relief to examine the handwriting expert at the instance of the plaintiff will entitle to fill up lacuna as it had failed to lead evidence in affirmative.

I have heard learned counsel for the parties and appraised the impugned order.

There is no dispute to the aforesaid facts. It is a matter of record that defendants after closure of their evidence, sought indulgence of trial Court to produce handwriting expert by way of additional evidence. The trial Court allowed the said application. Once the handwriting expert has been examined by the respondent/defendants, by way of additional evidence, plaintiff would have a right to rebut the same by seeking indulgence of the Court,

i.e., permitting handwriting expert to take photographs of the disputed documents. Denial of such right would render a gross miscarriage of justice as it would take away a valuable right of the plaintiff. Had the defendants not been granted the liberty to lead additional evidence, of course the right of plaintiff to examine the handwriting expert, in order to seek rebuttal of the evidence of the defendants, would not have been there.

In my view, the trial Court has committed illegality and perversity in declining the application, Annexure P-2, i.e., refusing permission to the plaintiff to rebut the evidence led by way of additional evidence, through assistance of handwriting expert.

In view of what has been observed above, the impugned order dated 20.08.2015, Annexure P-1 is set aside and the application, Annexure P-2, is allowed. Petitioner-plaintiff is permitted to rebut the evidence led by the defendants by way of additional evidence by examining the handwriting expert after taking the assistance of the Court.

Accordingly, the revision petition is allowed.

Trial Court is directed to ensure/make endeavor under the garb of such order plaintiff may not take un-desired adjournments.

(AMIT RAWAL)
JUDGE

September 29, 2015
savita