

In the High Court of Punjab and Haryana at Chandigarh

107

CR No.6064 of 2015  
Date of decision 18.9.2015

Sunil Setia

.....Petitioner

Versus

Ramesh Chander Gupta

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr.Ashok Tyagi , Advocate,  
for the petitioner.

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- 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. This revision petition has been filed by plaintiff under Article 227 of the Constitution of India seeking to examine handwriting and finger print expert in rebuttal to compare the signatures of defendant on Ex.P-1 to Ex. P-4, Vakalatnama, written statement and the statement made before the Court with the sample signatures and also to call the clerk of the office of Sub Registrar along with sale deeds executed by Bindia in favour of Savitri Devi, Ram Mehar, Daya Wati and Kesho Devi.

2. Issues were framed and parties led their respective evidence. Instant application was moved at the rebuttal stage. Petitioner pleaded that defendant Ramesh Chander Gupta as DW-2 has denied execution of documents Ex.P-1 to Ex.P-4 and, therefore, necessity arises for examining handwriting and

finger print expert.

3. It is relevant to point out that para No.2 of the written statement specifically recites that the defendant has denied the very execution of the agreement. Once a denial has been specifically made in the written statement, plaintiff is obligated to lead such type of evidence in affirmative. At the time of closing evidence by the plaintiff, no right was reserved for leading rebuttal evidence in respect of the issue, the onus of which was on the defendant. So far as issue of agreement is concerned, the onus was on the plaintiff himself. Despite clear denial in the written statement, no effort has been made to lead evidence in affirmative to prove execution of agreement to sell vis-à-vis signature/ thumb impression of the defendant. The plaintiff cannot be allowed to lead evidence in rebuttal in respect of issue, the onus of which is on the plaintiff.

4. Learned counsel for the petitioner by relying upon decision of this Court in **Jaswinder Singh vs. Rajwant Kaur and others** 2014 (2) Law Herald 1138 contended that examination of handwriting expert for comparison of signatures at rebuttal stage will clinch the real issue between the parties and would facilitate the Court in arising at correct decision.

5. Even though the provision is handmaid of justice but the Court is guided by some settled principles of law. In **Kashmir Kaur vs. Bachan Kaur** 2000 (2) RCR (Civil) 133, this

Court while dealing with Order 18 Rule 17-A, ruled that even if the plaintiff has closed his evidence in affirmative on an issue, the onus of which was on him, he still has a right to ask for an opportunity to rebut the evidence produced by the defendant because onus again shifts upon him. Plaintiff was held entitled to lead evidence in rebuttal as a matter of right.

6. 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 No. 15 of the judgement:-

*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 (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 (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)."*

7. Again in ruling 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

earlier Division Bench judgment in **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 taken in **Surjit Singh's case (supra)** as reproduced in earlier part of the judgment.

8. Since no right has been reserved by the plaintiff to lead rebuttal, therefore, this case has to be decided on the principles laid down in **Avtar Singh's case (supra)**. The Division Bench of this Court, 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 his right of rebuttal. In such a situation right to lead evidence in rebuttal would be forfeited in terms of Order 18 Rule 3 CPC. Facts of this case are distinguished from the case of **Jaswinder Singh's case (supra)**. Even otherwise, the dictum laid down in **Avtar Singh's case (supra)** has endorsed the views taken by earlier two Division Bench judgments and holds the field.

9. In view of aforesaid, no interference is called for in this revision petition and the same stands dismissed.

(RAJ MOHAN SINGH)  
JUDGE

September 18, 2015  
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