

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 6191 of 2015
Date of decision : September 19, 2015

Deepak

..... Petitioner

Versus

Virender and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R. S. Dhull, 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?

Amit Rawal, J (oral).

The petitioner has assailed the impugned order dated 31.7.2015 (Annexure P-15) whereby the application seeking to lead additional evidence by examination of hand writing expert, in rebuttal, has been declined.

Learned counsel for the petitioner-plaintiff submits that the suit for recovery had been filed on the basis of agreement to sell dated 6.2.2012 (Annexure P-1) which had been denied by the respondent-defendant in the written statement. Since the parties were at variance, the trial court framed the issues. There is no rebuttal issue.

He further submits that in the interest of justice, in case, an opportunity is granted the petitioner-plaintiff, he would be able to prove the averments made in the suit.

I have heard learned counsel for the petitioner and

appraised the paper book.

The provisions of Order 18 Rule 3 CPC leaves no manner of doubt that the party starting with the evidence has to lead his evidence in affirmative by discharging the onus. Since the respondent-defendant had denied the execution of the agreement to sell, the plaintiff was enjoined upon an obligation to prove the same by leading evidence in affirmative i.e. examination of hand writing expert for comparison of admitted signatures with the specimen signatures.

The application has been moved at the time when the suit had reached the stage of final arguments. In view of the law laid down by the Division Bench of this Court in **Surjit Singh and others 2007 (1) RCR (Civil) 537,** and reiterated again in **Avtar Singh and another Vs. Baldev Singh and others 2015(1) CivCC 728,** and particularly in the absence of rebuttal issue, the parties to the *lis* cannot be permitted to lead evidence in rebuttal. It has to discharge the onus by leading evidence in affirmative.

In view of the ratio decidendi culled out in the aforementioned judgments and the observations made above, I do not find any illegality and perversity in the impugned order. The order cannot be said to have been passed without jurisdiction.

There is no merit in the revision petition. The same is accordingly dismissed.

(AMIT RAWAL)
JUDGE

September 19 , 2015
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