

In the High Court of Punjab and Haryana at Chandigarh

CR No.7086 of 2012

Date of decision: 18.9.2015

Harmohan Singh

.....Petitioner

Versus

M/s Damini Resorts and Builders Ltd. and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.S.Panag, Advocate,
for the petitioner.

Mr.Rahul Rampal, Advocate,
for the respondents.

- 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 the petitioner against the order dated 16.11.2012 passed by Additional Civil Judge (Sr.Divn.), Ludhiana, vide which application for permitting the plaintiff to exercise his right of leading evidence in rebuttal on issues No.3, 4 and 5 has been dismissed.

2. Plaintiff-petitioner filed a suit for recovery against the defendants-respondents on the ground that the petitioner advanced a loan to the respondents. Respondent No.2 gave

cheque in lieu of liability of loan. The cheque was dis-honoured on presentation due to insufficiency of funds. Thereafter, plaintiff-petitioner filed the suit in question. Defendants-respondents contested the suit by denying the factum of issuance of cheque and claimed the same to be forged and fabricated document.

3. Following issues were framed by the trial Court:-

“1. Whether the plaintiff is entitled for recovery of ₹ 6,10,000/- from the defendants if the issue No.1 is prayed ? OPP.

2. Whether the plaintiff is entitled to the interest claimed. At what rate ? OPP

3. Whether the plaintiff has no cause of action to file the present suit ? OPP

4. Whether the present suit is bad for misjoinder of necessary parties ? OPD

5. Whether the suit is not maintainable as based on the forged and fabricated documents ? OPD

6. Relief.”

4. Cheque has been duly proved on record as Ex.P-3 in the evidence of the plaintiff. In the written statement, defendants with reference to para nos. 3 and 4 have claimed that the cheque is forged and fabricated. Issue No.5 has been framed accordingly. Defendants have examined Amit Kumar as DW-1

i.e. defendant no.2, who substantially admitted the stamp on the cheque Ex.P-3, but denied his signature. However, he admitted some signatures on the documents placed on the court file. After examining DW-1, defendants closed the evidence. The case was fixed for arguments.

5. Onus to prove issue No.5 was on the defendants. Defendant No.2 denied his signature in his cross-examination, while leading defence evidence and stated as to how the cheque was a forged and fabricated document.

6. Thereafter, the application for seeking permission to lead rebuttal evidence to the evidence led by the defendants was filed by the plaintiff.

7. It is pleaded in the application that defendant No.2 has denied his signature on cheque Ex.P-3 in his cross-examination on 1.11.2012. Plaintiff wants to rebut the same by examining expert and getting the admitted and questioned signature compared so as to prove genuineness of the signature appearing on the cheque. The said application was rejected by the trial Court vide impugned order dated 16.11.2012.

8. Learned counsel for plaintiff-petitioner states that plaintiff closed his evidence in affirmative on 18.9.2012 by making the statement. It means that he reserved his right to plead evidence in rebuttal. Learned counsel further states that in view of Order 18 Rule 3 CPC, plaintiff is entitled to lead

evidence in rebuttal on the issues, the burden of which is on the defendants. Where there are several issues, the burden of proving some of which lies on the defendant, the plaintiff, who started with the evidence has an option either to produce his evidence on those issues or reserve it by way of answer to the evidence produced by the defendant. Learned counsel also states that the procedural law is handmaid of justice and should be allowed to achieve ends of justice.

9. Additional Civil Judge (Sr.Divn.), Ludhiana has declined the prayer on the ground that defendants had denied in the written statement the factum of issuance of cheque and claimed the cheque to be forged and fabricated, therefore, plaintiff is not entitled to lead evidence in rebuttal. Although burden of proving issue No.5 was on the defendant, but the plaintiff failed to lead evidence in affirmative to prove its case that the defendant has issued the cheque to discharge the legal liability, therefore, at this stage, plaintiff is not allowed to fill up the lacuna by way of leading evidence in rebuttal which he could have led in affirmative. Since the case was fixed for arguments, therefore, trial Court was of the view that at this stage allowing the application would amount to recalling the order.

10. Apparently, vide order dated 18.9.2012, plaintiff has already reserved his right to lead evidence in rebuttal when he closed the evidence in affirmative. 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 of rebuttal to 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.

11. 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 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)."

12. 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 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 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.

13. 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 was again came before the Division Bench of this Court in **Avtar Singh vs. 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.

14. In the present case, the onus to discharge burden of issue No.5 was on the defendants. Defendant No.2, while

appearing as DW-2, has denied his signature. Plaintiff had earlier reserved his right to lead evidence in rebuttal in statement dated 18.9.2012. In view of aforesaid the ingredients to lead evidence in rebuttal stands fully satisfied in view of different authoritative pronouncements made by this Court as mentioned above.

15. Accordingly, this petition is allowed and the impugned order dated 16.11.2012 is set aside. Case is remanded to the trial Court and the trial Court is directed to make necessary compliance of the order after securing presence of both the parties.

(RAJ MOHAN SINGH)
JUDGE

September 18, 2015
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