

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 5437 of 2014 (O&M)

Date of Decision: 02.03.2016

Renu Jindal and Others

... Petitioner(s)

Versus

Subhash Chand and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Sanjiv Gupta, Advocate
for the petitioner(s).

Mr. Maharaj Kumar, Advocate
for respondent No.1.

Mr. R.S.Kundu, Advocate
for respondent No.2.

Shekher Dhawan, J.

Present petition is challenge to the order dated 19.7.2014, passed by learned Civil Judge (Junior Division), Karnal, whereby application filed by present petitioner for leading additional evidence was dismissed.

Relevant facts for the purpose of decision of the present petition that present petitioner/plaintiffs had filed suit for declaration

and mandatory injunction with consequential relief of permanent injunction for declaring judgment & decree dated 30.7.1994, passed in Civil Suit No. 490 of 1994, to be null and void. Defendants contested the suit and during pendency thereof, application for additional evidence was filed by the present petitioners so as to examine Handwriting & Finger Print Expert Ram Dhan Babbar to prove that decree dated 30.7.1994 is null and void on the ground that signatures of Suresh Kumar were forged one.

The Court below declined that application on the ground that as per amended provisions of Order 18 Rule 17A CPC, additional evidence is not permissible. More so, there are no grounds for allowing additional evidence. Plaintiffs were given due opportunity to lead their evidence, which was closed after tendering document on 10.5.2013. The fact regarding passing of earlier civil court decree was well within the knowledge of the petitioners. The Court below also dismissed the application on the ground that the case was fixed for rebuttal evidence and arguments and in case the same is allowed, that shall result into *de novo* trial.

Learned counsel for the petitioners mainly took the plea that main contention of the petitioners is that decree is forged and in order to substantiate the fraud, proposed additional evidence is most essential and that was filed at the stage of recording of rebuttal evidence, which is permissible under law. Evidentiary value is to be independently assessed by the Court and the same cannot be thrown away. Even if the application for leading additional evidence is accepted,

the same shall not delay the proceedings in any manner because only one witness i.e. Handwriting & Finger Print Expert has to be examined and the other party shall be well within his rights to seek rebuttal to that and as such, the impugned order is liable to be set aside.

Learned counsel for the petitioners also submitted that even after proposed amendment, the Court has got inherent power to allow additional evidence, if it is relevant and essential for the just decision of the case. On this point, reliance was placed upon the judgment rendered by the Division Bench of this Court in case ***Avtar Singh and Another v. Baldev Singh and Others 2015(1) PLR 230.***

While arguing on this point, learned counsel for the respondents submitted that plaintiffs had closed their evidence in affirmative and at that time, they had not reserved the right to lead evidence in rebuttal. More so, the proposed evidence was well within the knowledge of the petitioners and it is not to be led by way of rebuttal evidence rather by way of additional evidence, which is not permissible and the Court below has rightly dismissed the application.

Having considered the submissions made by learned counsel for the parties and the facts of the case, this Court is of the considered view that undisputedly, "rebuttal evidence" and "additional evidence" are two distinctive terms. As per view taken by the Division Bench of this Court in ***Avtar Singh's case (supra)***, rebuttal evidence can be allowed to be led only if a party exercises his option either when he closes his evidence in affirmative or in any case before the other

party begins its evidence. But if he fails to reserve any such right, in terms of the provisions of Order 18 Rule 3 CPC, his right to lead evidence in rebuttal would stand forfeited. The plaintiff can independently lead evidence in rebuttal over such a issue, the onus of which is purely on the defendant. Needless to assert that leading of evidence in rebuttal is also a part of the plaintiff's evidence. Whether he leads it in one go qua all the issues and close his evidence or reserve his right to lead any rebuttal evidence. Undisputedly, case of the petitioners is not covered that he has got any right to lead rebuttal evidence.

As far as the plea taken by the petitioners for leading additional evidence, the Court below has rightly taken the view that the proposed additional evidence was well within the knowledge of the applicant/petitioners and the same should have been allowed when due opportunity was given. As present petitioners already closed their evidence as per their statement, there is no question of allowing the evidence by way of additional evidence especially after amendment of Order 18 CPC. Needless to mention that the Court can allow additional evidence while exercising powers under Order 18 Rules 1 & 2 CPC read with Section 151 CPC. Additional evidence can be allowed but there must be some justified ground for allowing the same or that the party who wants to lead additional evidence should make out a case that despite due diligence, such an evidence could not be lead when due opportunity was given. But that is not a case before the Court below and it has rightly dismissed the application for additional evidence.

Resultantly, present petition is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

March 02, 2016
"DK"