

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

Civil Revision No.6190 of 2016

Date of Decision: 20.09.2016

M/s Satyam Steel

.....Petitioner

Vs

Smt. Sarla and another

.....Respondents

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

Present: Mr. Adarsh Jain, Advocate
for the petitioner.

RAJ MOHAN SINGH, J

[1]. Petitioner has assailed order dated 07.09.2016 passed by Civil Judge (Jr. Division) Faridabad vide which the application filed by the plaintiff for leading additional evidence by examining Handwriting Expert to rebut the report of Expert examined in defence was rejected.

[2]. Plaintiff/petitioner filed a suit for recovery against the defendants on the premise that the plaintiff had supplied *Saria* worth Rs.3,04,619/- vide Bill No.871 dated 09.05.2011 and worth Rs.1,95,906/- vide invoice No.875 dated 16.05.2011. The material was duly received by defendant No.2 by signing the bills. Later on defendants denied their liability to pay the dues,

therefore, the plaintiff filed suit for recovery under Order 37 CPC.

[3]. In the written statement filed by the defendants, they have denied their liability and challenged the suit on other grounds as well.

[4]. Plaintiff led its evidence. The defendants in their evidence examined Handwriting Expert to prove that the signatures appearing on invoices Ex.P-1 and Ex.P-2 were not that of defendant No.2. Thereafter plaintiff filed an application seeking permission to lead evidence in rebuttal by examining the Handwriting Expert to rebut the evidence of the defendants. The said application was opposed by the defendants.

[5]. Trial Court vide order dated 12.08.2016 dismissed the application for leading additional evidence of Expert in rebuttal by the plaintiff and plaintiff was not allowed to lead evidence in rebuttal of an issue, the onus of which was on the plaintiff himself.

[6]. Thereafter an application was filed by the plaintiff for permission to lead additional evidence by examining Handwriting Expert to rebut the report of Expert examined by the defendants in order to establish that denial of signatures by defendant No.2 on the invoices Ex.P-1 and Ex.P-2 was not

correct. The trial Court vide the impugned order dated 07.09.2016 declined the prayer for leading additional evidence on the premise that the evidence was to be led in affirmative as the evidence was well within the knowledge of the petitioner at the time when evidence in affirmative was led. It was observed that the plaintiff cannot be allowed to fill lacuna by resorting to additional evidence.

[7]. Learned counsel for the petitioner vehemently submits that the additional evidence for examination of Expert can be allowed at this stage as at the time of leading evidence in affirmative, the plaintiff could not anticipate that the expert evidence would be led by the defendants. Rebuttal of such evidence led by the defendants can only be done by way of additional evidence in view of dismissal of the prayer for leading evidence in rebuttal.

[8]. In support of his contention, learned counsel for the petitioner relied upon **Jugraj Singh etc. vs. Darshan Singh etc., 2001(1) CivCC 119; Bakshish Singh @ Bakshi vs. Tara Singh, 1990(2) PLR 614; Ram Singh (minor) vs. Pirthi and others, 1996(3) RCR (Civil) 619** and **Ved Parkash vs. Gopal Bansal, 1997(2) RCR (Civil) 273.**

[9]. I have considered the submission made by the learned

counsel for the petitioner, but do not endorse the same.

[10]. In **Kashmir Kaur vs. Bachan Kaur, 2002(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 a issue, the onus of which was on him, he still has a right to pray for an opportunity to rebut the evidence produced by the defendant as the onus again shifted upon him. In the aforesaid case plaintiff was held to lead evidence in rebuttal as a matter of right.

[11]. In **Surjit Singh and others vs. Jagtar Singh and others, 2007(1) RCR (Civil) 537 DB**, the Division Bench of this Court while interpreting Order 18 Rule 3 CPC examined the scope and ambit of right of the plaintiff to lead evidence in rebuttal on an issue, the onus of which was upon him. It was held in negative. Plaintiff was not held entitled to lead evidence in rebuttal in respect of an issue, the onus of which was upon him. The view expressed in **Surjit Singh and others'** case (supra) was reiterated by another Division Bench of this Court in **Jagdev Singh and others vs. Darshan Singh and others, 2007(1) RCR (Civil) 794**. The judgment rendered in **Smt. Kashmir Kaur's** case (supra) was over ruled regarding the point of leading evidence in rebuttal as a matter of right. The

controversy was again reiterated in **Avtar Singh vs. Baldev Singh, 2015(1) PLR 230.**

[12]. There is a mark difference between additional and the rebuttal evidence. The additional evidence is with respect of a fact which was not within the knowledge or the same could not be known by the party despite due diligence. However in respect 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.

[13]. In the instant case, there was a denial of signatures by the defendant No.2 in the written statement and the fact was in the knowledge of the plaintiff, therefore, plaintiff cannot say that despite due diligence the fact could not be known to him. Similar prayer for leading evidence of Expert to rebut the expert evidence of the defendants has already been denied at the time of rebuttal evidence. The filing of the application for additional evidence is just to by pass the order vide which prayer for leading evidence in rebuttal was declined.

[14]. In **Ram Kumar vs. Raj Kumar and others, 2014(3) CivCC 453** it was held by this Court that Handwriting Expert cannot be allowed to be examined in rebuttal and even cannot be allowed to be examined by way of additional evidence as this

was well within the knowledge of the petitioner at the time when he was leading evidence in affirmative. Party cannot be allowed to fill lacuna by adducing additional evidence without satisfying the Court that such an evidence is required for effective adjudication of the case.

[15]. Plaintiff had the knowledge of the stand of the defendant from the very inception. Having failed to lead its evidence in affirmative and in rebuttal, thereafter plaintiff cannot resort to an application under Order 18 Rule 17-A CPC as the same would have the effect of filling lacuna and would be in negation to the order vide which prayer for leading evidence in rebuttal was declined.

[16]. In **M/s Shree Sangmeshwar Mahadev Gramo Udyog Mandal vs. Ajmer Singh and another, 2014(4) Law Herald 3627**, this Court held that the additional evidence cannot be allowed to be led by the plaintiff when the evidence was within the knowledge of the plaintiff at the time of leading evidence in affirmative. Additional evidence to contradict the evidence of the defendant cannot be allowed in such circumstances. No such satisfaction could be made out with regard to the fact that the evidence in question was not within the knowledge of the plaintiff at the time of leading evidence in affirmative. The

discretion under inherent powers of the Court cannot be exercised in the given situation.

[17]. In view of aforesaid, I do not subscribe the arguments raised by the learned counsel for the petitioner. This revision is accordingly dismissed.

September 20, 2016
Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned	Yes / No
Whether reportable	Yes / No