

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 7600 of 2013

Date of Decision: 20.05.2016

Nitin Kataria and Others

... Petitioner(s)

Versus

Subhash Chander and Others

... 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. Saurabh Singla, Advocate
for the petitioner(s).

Mr. Anurag Chopra, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India for setting aside order dated 3.12.2013, passed by learned Civil Judge (Junior Division), Fazilka, whereby application filed by the applicant/plaintiffs for seeking permission to prove the copy of Register of Mr. Roshan Lal Verma, Notary Public, Fazilka bearing entry No. 676 dated 30.6.2000; to examine the said Mr. Roshan Lal Verma and also to take photographs of the alleged signatures of Kharaiti Lal and Sandeep Kumar from the Register of Notary for comparison and for examining the

Handwriting Expert, was dismissed.

Learned counsel for the petitioners submitted that following issues were framed by the Court below on 19.4.2010:-

- “1. *Whether the plaintiffs are entitled to the relief of P/inj as prayed? OPP*
2. *Whether the plaintiffs have no right/locus standi to file the present suit? OPD*
3. *Whether the plaintiffs have concealed the material facts from the Court, if so, its effect? OPD*
4. *Relief.”*

The onus to prove issues No. 2 & 3 was upon the defendants and plaintiffs wanted to lead rebuttal evidence on the said issues because this fact had come into the notice of the plaintiffs only after leading of the evidence by the defendants. But the Court below took erroneous view and declined the prayer, whereas the same should have been accepted. On this point reliance was placed upon the judgment rendered by this Court in ***Om Parkash v. Thana Ram and Others 2011(1) PLR 190.***

Learned counsel for the respondents submitted that in fact the main issue in this case was issue No.1, whereas issues No.2 & 3 were only legal issues and the evidence, which the petitioners wanted to lead by way of rebuttal evidence was in fact required to be led when they were given due opportunity to lead evidence. But that has not been done. Now the case is fixed for rebuttal evidence and arguments after conclusion of the evidence by both the parties and the application has rightly been declined by the Court below. More so, this fact was well within the knowledge of the petitioners

right from the beginning because respondents had taken the plea in the written statement as well and now the petitioners cannot take the plea that this fact came to their knowledge only after conclusion of evidence of the respondents and present petition is without any merit and the same be dismissed.

Having considered the submissions made by learned counsel for the parties; gone through the record of the case and impugned order and gone through the judgment rendered by this Court in ***Om Parkash's case (supra)***, this Court is of the considered view that facts of the case in hand are entirely distinguishable from the facts of above said judgment. In the instant case, main issue upon which the parties were leading their respective evidence was issue No.1. The onus to prove issue No.1 was upon the plaintiffs and they have already led their evidence thereon. The evidence which the petitioners wanted to lead by way of rebuttal evidence in fact should have been led at the time when due opportunity was given to them. The Court below has rightly declined the prayer on the ground that in case the same evidence is allowed to be led, it shall be *de novo* trial.

As regard to admissibility of evidence, at the time of leading of rebuttal evidence, similar matter was before the Division Bench of this Court in ***Avtar Singh and Another v. Baldev Singh and Others (Civil Revision No. 2203 of 2010, decided on 21.11.2014)***. More so, 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 an issue, the onus of which is purely on the defendant. Needless to mention that leading of evidence in rebuttal is also a part of the plaintiff's evidence. Undisputedly, case of the petitioners is not covered that he has got any right to lead rebuttal evidence. This fact assumes much more importance because in the instant case, the plea that detailed written statement was filed taking all the pleas and nothing had come by way of evidence led by the defendants to make out a case for rebuttal evidence. The Court below has already considered all these facts while passing the impugned order.

Resultantly, present petition is hereby dismissed being devoid of any merit.

(Shekher Dhawan)
Judge

May 20, 2016
“DK”