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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-7720-2015 [O&M]

Date of Decision : January 6th , 2016

Vishavnath

.... Petitioner

Versus

Satish Kumar and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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?

Present Mr. Raghav Sharma, Advocate,
for the petitioner.

Mr. S.S.Joshan, Advocate,
for respondent No.1.

Mr. Pulkit Verma, Advocate,
for respondent No.2.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India is for setting aside order dated 06.10.2015 [Annexure P/3] passed by Additional Civil Judge [Senior Division], Kurukshetra whereby, the application filed by the petitioner [Defendant No.1 before the trial Court] to disallow the examination of Hand-Writing Expert and other witnesses in rebuttal evidence was dismissed and the plaintiff [respondent No.1 herein] has been allowed to examine the expert witness in rebuttal evidence.

2. Relevant facts of the case, that plaintiff – Satish Kumar, respondent No.1 herein, has filed a suit for recovery of Rs.40.00 lacs.

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Defendants denied their liability and took the plea that plaintiff used blank stamp papers and thumb marks and forged and fabricated the agreement to sell in question. Issues were framed and the parties led their respective evidence.

3. At the stage of rebuttal evidence and arguments, an application was filed by defendant No.1, the present petitioner, taking the plea that the onus to prove the issues was upon the plaintiff to prove the execution of the alleged agreement. The evidence was to be led in affirmative regarding the genuineness and validity of the agreement. The plaintiff wanted to lead the evidence in rebuttal which was in fact, evidence of affirmative nature and the same could not be allowed.

4. Respondent No.1, [plaintiff in the main suit] had taken the plea that three witnesses, namely, Randhir Singh, Advocate, Notary Public, Karam Singh, Petition Writer and Satish Kumar, Stamp Vendor, were summoned alongwith record and they were present in the Court on 7.7.2015. At that time, the Handwriting Expert was not available and the case was fixed for 22.7.2015 and 7.8.2015. At that stage, the application was filed by the present petitioner with oblique motive to delay the proceedings of the case.

5. Learned trial Judge after considering the entire matter dismissed the application filed by the present petitioner vide order dated 6.10.2015 and the plaintiff was allowed to lead rebuttal evidence, on the ground that evidence sought to be led is of affirmative nature and if the same is disallowed by the Court, the plaintiff would suffer irreparable loss and injury.

6. Learned counsel for the petitioner submitted that the burden to

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prove the execution of the alleged agreement was upon the plaintiff and learned trial Judge wrongly dismissed the application and granted permission to lead the said evidence in rebuttal.

7. Having considered the submissions made by learned counsel for the parties, this Court is of the view that the entire controversy revolves around the fact, whether the plaintiff was entitled to recover Rs.40.00 lacs on the grounds mentioned in the plaint.

8. For reference, the issues framed by learned trial Court are being reproduced hereunder :-

- “1. Whether the plaintiff is entitled to a decree for recovery of Rs.40,00,000/- along with pendente and future interest at the rate of 18% p.a. on the grounds mentioned in the plaint? OPP
2. Whether the suit of the plaintiff is maintainable in its present form? OPD
3. Whether the plaintiff has no locus standi to file and maintain the present suit? OPD
4. Whether plaintiff has been stopped to file and maintain the present suit by his own act and conduct? OPD
5. Whether the plaintiff has no cause of action? OPD
6. Whether the plaintiff has concealed true and material facts from the Court? If so, its effect? OPD
7. Relief.”

9. A perusal of the above issues reveals that onus to prove the genuineness and validity of the agreement to sell was on the plaintiff. The plaintiff concluded his evidence and thereafter the defendants led their evidence and during that process examined Handwriting Expert as well who made a statement that the agreement of sale was a forged document. The said Handwriting Expert was duly cross-examined by the plaintiff. Now, the plaintiff wanted to lead the evidence to examine Handwriting

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Expert and three more witnesses although, there is no such issue on the basis of which such an evidence could be allowed by way of rebuttal evidence. Learned trial Judge placed reliance upon judgment of this Court in **Joginder Kaur Vs. Jaswant Singh 1998 [3] CCC 274 [P&H]**.

10. I have gone through the judgment from a Co-ordinate Bench of this Court in **Joginder Kaur's case [supra]**. In the said case, the following issues were framed by the trial Court :-

- “i). Whether the plaintiff is in possession of the suit land? OPP
- ii). Whether the plaintiff executed the agreement dated 21.3.1992 in favour of the defendant and if so to what effect? OPD
- iii). Relief.”

11. In that case, issue No. (ii) was regarding execution of agreement and the onus to prove the same was upon the defendant and considering those facts, this Court formed the opinion that such evidence could be led by way of rebuttal evidence. The facts of the case in hand are entirely distinguishable as here the onus to prove issue No.1 was upon the plaintiff and the evidence which the plaintiff intended to lead, was not in rebuttal. Otherwise, such an evidence cannot be led by way of rebuttal evidence. Such a view was taken by a Division Bench of this Court in **Avtar Singh and another Vs. Baldev Singh and others, CR-2203-2010 decided on 21.11.2014**. Similar view was taken by Co-ordinate Benches of this Court in **Sukhwinder Pal Singh Vs. Bhupinder Kaur, 2014 (3) CCC 319 [P&H]**, **Ram Kumar Vs. Raj Kumar & Ors, 2014 (3) CCC 453 [P&H]** and **Suresh Kumar Vs. Joginder Singh, 2012 (1) CCC 688 [P&H]**, wherein, it has been held that simply because the Handwriting Expert has been examined in defendant's evidence, the plaintiff cannot be allowed to lead evidence or

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to examine Handwriting Expert in rebuttal evidence.

12. As regards to examination of remaining witnesses, namely, Randhir Singh, Advocate, Notary Public, Karam Singh, Petition Writer and Satish Kumar, Stamp Vendor, there was absolutely no ground to examine them after conclusion of plaintiff's evidence.

13. In view of the above, the present revision petition is accepted and the order dated 06.10.2015 [Annexure P/3] passed by Additional Civil Judge [Senior Division], Kurukshetra is legally not sustainable and the same is hereby set-aside.

(SHEKHER DHAWAN)
JUDGE

January 6th, 2016
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