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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 953/2015 & C.M. No.22812/2015 (stay)

SHAD KHATOON @ DILSHAD KHATOON

..... Petitioner

Through Mr.Amit Verma, Advocate.

versus

BADLE (DECEASED) THR LRS & ORS

..... Respondents

Through Mr.Sudhir Kumar Sharma and Mr.
Atif Hasan, Advocates.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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26.04.2016

Order impugned before this Court is the order dated 18.9.2014 wherein rebuttal evidence had been permitted to the respondent (plaintiff in the Trial Court). The petitioner (defendant in the Trial Court) is aggrieved by the aforementioned order.

Record shows that the present suit is a suit for possession, permanent injunction and mesne profits filed by the plaintiff against the defendant. Issues were framed in the year 2009. Evidence of the plaintiffs in the affirmative stood closed on 20.02.2013. On 28.8.2014 evidence of the defendant stood closed. The present application came to be filed on 18.9.2015 wherein a prayer was made

by the petitioner seeking permission of the Court to lead evidence in rebuttal.

The averments contained in the aforementioned application have been perused.

The submission of the learned counsel for the respondent (plaintiff in the Trial Court) is that rebuttal evidence can take place only after the evidence of the defendant is over. This is an undisputed proposition. There is no dispute about this submission. Reliance by the learned counsel for the respondent upon a judgment of a Coordinate Bench of this Court reported as 2010 IV AD (DELHI) 262 Wazirpur Small Industries Associated (Regd.) Vs. Union of Indian & Ors. is however misplaced. This judgment only lays down the proposition that it is after the defendant evidence is over that the plaintiff can decide where there is a necessity of leading evidence in rebuttal or not. It is only at that stage he can seek his prayer to the said effect.

However, in the instant case, the averments contained in the application seeking permission to lead evidence in rebuttal clearly shows that this is a fresh evidence which the plaintiff seeks to produce before the Court. By way of this application, respondent (plaintiff in the Trial Court) seeks to get the signatures and thumb impression of Late Ram Saran who is purported to have signed Ex.DW-1/2 (colly) to be examined through an expert and for the said purpose rebuttal evidence has to be led. He has also not reserved his right to led evidence in rebuttal. This prayer was allowed.

This Court is the view that this order suffers from an illegality as the scope of rebuttal evidence is distinct from the evidence produced in the affirmative. Scope of rebuttal evidence is to rebut that evidence which has been produced in defence and which has appeared for the first time. In fact the defence already known to the plaintiff (as is in the instance case) i.e. Ex.DW-1/2 (colly) which are an agreement to sell and receipt dated 13.9.2005 were documents in the knowledge of the petitioner/plaintiff much prior to the time when he had led his evidence in the affirmative as also at the time when he had opportunity to cross-examine the witnesses of the defendant and as such his prayer seeking permission to get the signatures on documents Ex.DW-1/2 (colly) of late Ram Saran to be sent to an expert would not be within the import and the purport of a rebuttal evidence; it would amount to a fresh evidence which is not the scope of what can be permitted in rebuttal as the name itself suggests “rebuttal” means to rebut something which has appeared for the first time in defence; this is not so in the instant case. In this context the observations of the Punjab and Haryana High Court reported as (2015) 177 PLR 230 Avtar Singh and Ors. Vs. Baldev Singh and Ors. had held as follows:

“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

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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.”

Impugned order is accordingly set aside.

Petition is allowed.

INDERMEET KAUR, J

APRIL 26, 2016

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