

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

209

CR No.2834 of 2014

Date of decision: 23.05.2017

Sarla Devi

....Petitioner

Versus

Naveen Johar

...Respondent

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.H.S.Saggu, Advocate, for the petitioner.

Mr.J.K.Singla, Advocate, for the respondent.

G.S. SANDHAWALIA, J.

The present revision petition, filed by the landlord, under Article 227 of the Constitution of India, is directed against the order dated 03.04.2014 (Annexure P5), passed by the Rent Controller, Sangrur, whereby an application for additional evidence was allowed and the tenant was permitted to examine the handwriting expert, to rebut the evidence led by the landlord.

The reasoning given was that issue No.4 pertains to material alterations made in the rent note dated 13.09.1995 and once the landlord had examined Dr.Inderjit Singh, the handwriting expert, in rebuttal evidence, therefore, the necessary permission was granted to the tenant, to rebut the said evidence. The tenant had taken the plea that due to inadvertence he had failed to examine the handwriting expert and the application was allowed, subject to costs of Rs.1500/-.

The procedure which has been adopted by the Rent Controller, cannot be sustained, in view of the settled proposition of law as to whether a party can be permitted to lead evidence in rebuttal on an issue in which the onus of proof is on the said party.

Three Division Benches having pronounced on the said issue in *Surjit Singh & others Vs. Jagtar Singh & others 2007 (1) PLR 552* and *Jagdev Singh & others Vs. Darshan Singh & others 2007 (2) PLR 315* and after the impugned order was passed, in *Avtar Singh & another Vs. Baldev Singh & others 2015 (1) PLR 230* and settled the law on the said aspect. The Rent Controller has decided contrary to the said principles, which finds mention in Order 18 Rule 3 CPC.

The facts which have to be noticed, accordingly, are that a petition was filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act') for ejectment of the respondent-tenant and the plea taken was that there was enhancement clause in the rent note that the rent would be enhanced @ 10% after every 2 years and accordingly, rent was claimed at enhanced rates w.e.f. 01.09.1997 @ Rs.3800/-, Rs.4235, Rs.4658/-, Rs.5124, Rs.5636, Rs.6200/- per month, for the respective periods, in the petition filed on 18.12.2008.

The respondent-tenant took the plea in defence that the landlord had materially altered the rent note and added para 12 in the rent note, in the absence of the tenant and there was never any clause of enhancement which had been got typed with *mala fide* intention. The rate of rent was only Rs.3500/- with house tax of Rs.472.50, which was being paid and he was ready to pay the rent and the same was provisionally assessed. Receipt of challan of Rs.3500/- was also

attached. Resultantly, the agreement of the enhancement of rent was disputed in the written statement, filed on 18.03.2009.

The issues were framed on 08.06.2010 and issue No.4, wherein in view of the plea whether the landlord had materially altered the rent note and got added para 12, in the absence of the tenant, was framed and the onus was put upon the tenant, since he had raised the said defence. Once the evidence of the petitioner-landlord was closed and the tenant also examined his evidence and thereafter, closed his evidence, after availing numerous opportunities and did not examine the handwriting expert to prove the factum of the alteration of the rent note, the onus of which was upon him.

Thereafter, it is apparent that the landlord while leading evidence in rebuttal, examined the handwriting expert, regarding the alteration made in the rent note. Thereafter, the application came to be filed by the tenant that he should be permitted to examine Dr.Inderjit Singh, Finger & Handwriting Expert, by way of additional evidence. It was pleaded that inadvertently, he could not examine the said handwriting expert and therefore, by way of additional evidence, the said exercise was sought to be done. His application was resisted on the ground that the evidence of the respondent had already been closed and he had availed various opportunities and the case was very old and therefore, the petitioner having already led his rebuttal evidence no case was made out to allow the application. It was further the case of the landlord that the counsel for the tenant had examined the witnesses of the

petitioner and also cross-examined the handwriting expert, produced by the landlord and therefore, he had no right to rebut the evidence led by the petitioner in rebuttal, as per the settled law. Resultantly, the impugned order came to be passed.

Counsel for the petitioner has relied upon a judgment in **Harbans Kaur Vs. Amarjit Kaur & others 2012 (2) PLR 341**, in support of his contention that additional evidence could be permitted as the onus was upon the tenant to prove the same.

A perusal of the said judgment would go on to show that it was a case where the defendants had to prove the validity of the Will and examined one of the attesting witnesses, since the onus was upon them. However, in rebuttal, the plaintiffs had got the report of the Finger Prints Expert and it was, in such circumstances, application for additional evidence was filed by the defendant in that case, which was allowed by the Trial Court. The said order was challenged before this Court and keeping in view the above facts and the principle that rules are subservient to the hand-maids of justice, the revision petition was dismissed in limine. However, the Division Bench's were never noticed by the Ld. Single Judge Bench of this Court and therefore, counsel for the petitioner cannot seek any strength from the said judgment.

In **Surjit Singh** (supra), the scope and right of the plaintiff to lead evidence in rebuttal, on the issues, onus of which was upon the plaintiff, was subject matter of consideration. An earlier Division Bench

judgment, in ***Jaswant Kaur Vs. Devinder Singh AIR 1983 P&H 210***, was taken into consideration to come to the conclusion that the right of the plaintiff to lead evidence in rebuttal on the issues in which the onus was upon him to prove the same could not be allowed and the plaintiff could not be permitted to file an application under Order 18 Rule 3 CPC. Accordingly, it was held that no matter how liberal the provision is required to be interpreted, the onus to prove the evidence in support of the issues would mean that the plaintiff cannot be permitted to reserve the right to lead evidence in rebuttal. The relevant observations read as under:

“15. 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 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". No matter, how liberally a provision in the statute is required to be interpreted, by interpretation it cannot be amended. Whilst construing a statutory provision the Court cannot reconstruct it. The rule consciously provides the parties with an option either to produce the evidence in support of the issues or to reserve it by making a statement to that effect. The statement itself may well be liberally construed to avoid any unnecessary technical obstacles. One such example has been given by the Division Bench in the case of Smt. Jaswant Kaur AIR 1983 P & H 210 (supra). It has been held that if a statement is made by the Advocate for

the plaintiff that "the plaintiff closes its evidence in the affirmative only", the same would be read to mean that the plaintiff had reserved its right to lead evidence in rebuttal. We are, therefore, unable to agree with the observations made by the learned single Judge in the case of Kashmir Kaur (supra) that he is entitled to lead evidence in rebuttal as a matter of right. In our opinion, this observation runs contrary to the observations of the Division Bench in Jaswant Kaur's case (supra). The Division Bench has even fixed the maximum time on which the plaintiff has to exercise his option to reserve the right to lead evidence in rebuttal. It has been clearly held that such a reservation has to be made at the time of the close of the evidence of the plaintiff. We are also unable to agree with the observations of the learned single Judge in the case of Punjab Steel Corporation AIR 2001 P & H 331 (supra). In that case the plaintiff sought to lead evidence in rebuttal, after the close of the evidence of the defence. At that stage, the plaintiff cannot be permitted to reserve the right to lead evidence in rebuttal. The observations of the learned single Judge run contrary to the law laid down by the Division Bench in the case of Smt. Jaswant Kaur (supra). No doubt, the Division Bench clearly lays down that an overly strict view cannot be taken about the modality of reserving the right of rebuttal. But at the same time, it has been held that the last stage for exercising option to reserve the right of rebuttal can well be before the other party begins its evidence. We are in respectful agreement with the aforesaid observations of the Division Bench in the case of Jaswant Kaur (supra) and R.N. Mittal, J. in National Fertilizers Ltd. AIR 1982 P & H 432 (supra).

The reference is answered accordingly. Let the Civil Revision be placed before the single Judge for decision of the same on merits.

Reference answered.”

The said view was, thereafter, followed in **Jagdev Singh** (supra), wherein similarly, the plaintiff had been allowed to examine the handwriting expert in rebuttal evidence, the onus to prove of which was upon them. Resultantly, the order was set aside, keeping in view the settle position of law.

In **Avtar Singh** (supra), while deciding the reference, the Division Bench expressed its complete and respectful agreement with the principles laid down in the earlier cases and held as under:

“7. Firstly, the difference one needs to bear in mind is that the provisions of Order 18 Rule 2 CPC do not contemplate a situation where there are several issues involved and the burden of proof some of which lies on the defendant. Rather, what the provision takes within its sweep is a situation where on the date fixed for hearing of the suit, the party having the right to begin shall state his case and lead evidence on the issues he is bound to prove. Ex facie, the provision only caters to a situation where the burden of proof of all the issues is upon the party beginning. Thereafter, the other party i.e. defendant shall state his case and produce his evidence (if any). Meaning thereby, the provision of Order 18 Rule 2(2) only postulates a right to the defendant to lead evidence in rebuttal to the evidence led by the plaintiff. The expression "if any" denotes rebuttal evidence by the defendant. The afore-reproduced provision does not contemplate a situation, where the burden of proof of some of the issues lies upon the defendant, and after he leads evidence on said issues, plaintiff would lead evidence in rebuttal. Therefore, the expression, "and may then address the Court generally on the whole case." and the expression

occurring in Order 18 Rule 2(3), "the party beginning may then reply generally on the whole case." only signify that after the defendant has led evidence (if any), he has a right to address and advance submissions on the whole case and likewise, the party beginning i.e. generally the plaintiff, would also have a right to advance submissions and respond to the case on the whole. Provisions of Order 18 Rule 2(3) cannot be construed or constructed to mean that after defendant had rendered his response to the whole case, plaintiff could still have a right to lead evidence in rebuttal. Such an interpretation or construction of the provision would be distorting the provision beyond its content. This perception and understanding further finds complete resonance in the provision of Order 18 Rule 3 CPC, as only the said provision deals with a situation where there are several issues and the burden of proof some of which lies upon the defendant. That is how, Division Bench in Surjit Singh's case (supra) interpreted Order 18 Rule 3, to determine the scope and ambit of the right of the plaintiff to lead evidence in rebuttal, on issues the onus of proof of which is on the plaintiff. Thus, both the aforesaid provisions cannot be read in conjunction but independently and in isolation, as regards the right of the party beginning to lead rebuttal evidence."

Though, the Code of Civil Procedure is not strictly applicable, as such, to the Rent Act, but the authorities under the Act, as such, are bound by the said principles. Resultantly, keeping in view the above discussion, this Court is of the opinion that the order passed by the Rent Controller is not justified, in the facts and circumstances, once the onus was upon the tenant to prove issue No.4 once his evidence had been closed. Thereafter, he could not lead evidence in rebuttal, which has been

wrongly permitted by the Rent Controller, vide the impugned order,
which is accordingly set aside and consequently, the present revision
petition is allowed.

23.05.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes