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

**Civil Revision No.3276 of 2017 (O&M)
Date of Decision: 10.07.2017**

SUBHAN KHAN

.....Petitioner

Vs

TAYYAB HUSSAIN AND ORS

.....Respondents

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

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

RAJ MOHAN SINGH, J.

[1]. Petitioner has filed the present revision petition assailing order dated 17.04.2017 (Annexure P-3) passed by Civil Judge (Jr. Divn.) Mewat vide which application dated 10.04.2017 filed by him for permission to examine handwriting and fingerprint expert by way of additional evidence was declined.

[2]. Brief facts are that in a suit for declaration with consequential relief of permanent injunction filed by the petitioner, he led evidence and thereafter evidence of the defendants started. At the time of leading evidence, the plaintiff did not examine any handwriting and fingerprint expert in

respect of relevant issue, the onus of which was upon himself.

[3]. The question arises as to whether the plaintiff can be allowed to lead evidence in rebuttal or additional evidence in respect of an issue, the onus of which on the plaintiff himself?

[4]. On the strength of observations made in **Surjit Singh and others vs. Jagtar Singh and others, 2007(1) RCR (Civil) 537 DB; Jagdev Singh and others vs. Darshan Singh and others, 2007(1) RCR (Civil) 794** and **Avtar Singh vs. Baldev Singh, 2015(1) PLR 230**, it can be concluded that the plaintiff is not entitled to lead evidence in rebuttal in respect of an issue, the onus of which was upon himself.

[5]. In **Ram Kumar vs. Raj Kumar and others, 2014(3) CivCC 453**, it has held that handwriting expert cannot be allowed to be examined in rebuttal and even cannot be allowed by way of additional evidence as this fact was within the knowledge of the petitioner at the time, when he was leading evidence in affirmative. Parties 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.

[6]. Plaintiff had the knowledge from the very beginning. Having failed to lead evidence in affirmative and also in rebuttal,

plaintiff cannot resort to an application under Order 18 Rule 17-A CPC as the same would be having the effect of filling lacuna and would be in negation to the order vide which prayer for leading evidence in rebuttal could have been declined.

[7]. 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 evidence was within his knowledge at the time of leading evidence in affirmative. Additional evidence to contradict the evidence of the defendant cannot be allowed in such circumstances. No 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 facts and circumstances of the case.

[8]. Having considered the issue in the light of material on record, I find that the impugned order does not require any interference as the plaintiff is not entitled to lead additional evidence in the form of examining handwriting and fingerprint expert in respect of an issue which is legally required to be proved by the plaintiff and onus was on the plaintiff himself to prove the same.

[9]. In view of above, this revision petition is dismissed.

July 10, 2017	(RAJ MOHAN SINGH)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No