

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

Civil Revision No.3521 of 2017

Date of Decision: 23.08.2017

M/s Unique properties

. . . Petitioner

Versus

Anita Singhal

. . . Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Ruchi Manuja, Advocate
for the petitioner.

Anil Kshetarpal, J. (Oral)

This revision petition is arising out of order dated 25.04.2017 (Annexure P-1) passed by learned Civil Judge (Senior Division), Faridabad, dismissing the application of the petitioner/plaintiff for leading evidence in rebuttal.

Plaintiff filed a suit for recovery of money under Order 37 CPC.

Defendant filed written statement and contested the suit.

The learned trial Court vide order dated 20.02.2015 framed issues which are extracted as under:-

1. *Whether the plaintiff is entitled to a decree of Rs.10,00,000/- along with 18% interest from the date of actual payment i.e. 15.10.2011 till its actual realisation along with costs? OPP.*

2. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
3. *Whether the plaintiff has no locus standi to file the present suit? OPD*
4. *Whether the plaintiff has no cause of action to file the present suit? OPD*
5. *Whether the plaintiff has not come to the court with clean hands and concealed the material facts? OPD*
6. *Whether the present suit is false, frivolous and vexatious? OPD*
7. *Relief.*

Plaintiff was directed to lead evidence. After closure of the evidence of the plaintiff, defendant also led its evidence.

Petitioner/plaintiff filed an application for permission to lead evidence in rebuttal by examining the handwriting expert, proving FIR No.631 of 2011 and also record pertaining to the diary of FEWA. The learned trial Court dismissed the application on two grounds i.e. (i) plaintiff did not reserve his right to lead evidence in rebuttal; (ii) the permission to lead evidence in rebuttal is granted with respect to the issue, onus whereof was on defendant. The Court has recorded that the onus to prove Issues No.2, 3, 4, 5 and 6 is on the defendant. However, these issues are formal in nature. Plaintiff now wants to lead evidence in rebuttal in respect of issue No.1.

Learned counsel for the petitioner has argued that the order passed by the trial Court declining permission to the plaintiff to lead rebuttal evidence is erroneous. The Court has overlooked the fact that the

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defendant had produced documents by way of secondary evidence and had also examined expert.

I have considered the submissions made by learned counsel for the petitioner, however, I do not find any substance therein.

A look at the issues would prove that onus to prove Issue No.1 was on the plaintiff. Plaintiff had filed a suit for recovery of Rs.10 Lakhs along with interest @ 18% per annum and led evidence to prove his case. Thereafter, defendant was given opportunity to lead evidence in counter the evidence led by the plaintiff. It is a settled law that the opportunity to lead evidence in rebuttal can only be granted to the plaintiff in respect to the issue, onus whereof is on the defendant. (*Refer to Division Bench judgment reported as 2007(1) RCR (C) 537 titled as 'Surjit Singh and others Vs. Jagtar Singh'*). In this case, plaintiff wants to lead evidence in rebuttal with respect to issue No.1 onus to prove whereof is on the plaintiff. Further, it has been found by the learned trial Court that the plaintiff did not reserve its right to lead evidence in rebuttal. Learned counsel for the petitioner could not dispute these facts.

For the reasons recorded above, I do not find any ground to interfere with the impugned order passed by the trial Court.

Revision petition is dismissed.

[ANIL KSHETARPAL]
JUDGE

August 23, 2017
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Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No