

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

CR No.4328 of 2016

Date of decision : 8th Sept. 2017

Darshan Singh and another

...Petitioners

Versus

M/s Kissan Enterprises

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate for the petitioners.

Mr. M.S. Cheema, Advocate for the respondent.

ANIL KSHETARPAL, J.

Defendants-petitioners are in revision petition against the order dated 17.05.2016 permitting the plaintiff to examine the Handwriting Expert in rebuttal evidence.

Plaintiff had filed a suit for recovery of ₹9,59,890/- alongwith future interest. It was pleaded that the plaintiff is a partnership firm running a business of Commission Agent and defendants are farmers who use to sell their agriculture produce through the plaintiff firm. It is further pleaded that the defendants also use to borrow the money from the plaintiff and, therefore, the plaintiff is to recover a sum of ₹6,93,788/- as principle and remaining as interest.

Defendants contested the suit by filing the written statement.

The sale of the agriculture crop through the shop of the plaintiff was admitted. It was pleaded that the plaintiff firm had failed to render accounts. The assertions made in para No.5 of the plaint to the effect that the defendants had borrowed certain amount was denied by the defendants.

Learned trial Court after considering the pleadings in the suit opted to frame the following issues:-

- “1. Whether plaintiff is entitled for a decree for recovery of Rs.959890/- along with costs, pendente lite and future interest as claim firm clause? OPP.*
- 2. Whether suit is not maintainable in the present form? OPD*
- 3. Whether the plaintiff has no locus standi to file and maintain the present suit? OPD*
- 4. Relief.”*

The plaintiff firm was permitted to lead evidence. After conclusion of the evidence of the plaintiff, defendants led their evidence. When the case was at the stage of rebuttal and arguments, the plaintiff moved an application to examine Handwriting Expert in rebuttal evidence. Learned Court allowed the application on the ground that the defendant No.2 had denied his signatures in the cross-examination for the first time and, therefore, the plaintiff is entitled to lead evidence in rebuttal.

I have heard learned counsel for the parties at length and with their able assistance gone through the record of the case. It is well settled by this Court that the plaintiff is allowed to lead evidence in rebuttal only with respect to the issue, onus whereof was on the defendants. Plaintiff is not permitted to lead evidence in rebuttal with respect to the issue, onus whereof is on the plaintiff. The two Division Bench Judgments of this Court

are reported as 2007(1) PLR 552 titled as *Surjit Singh and others Vs. Jagtar Singh and others*, and 2007(1) RCR (Civil) 794 titled as *Jagdev Singh and others Vs. Darshan Singh and others*. Para No.15 of the judgment reported as 2007(1) PLR 552 reads as under:-

“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 (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 (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. (supra).”

It is clear from the reading of the judgment that the plaintiff has right to lead evidence in rebuttal only with respect to the issue, onus whereof is on the defendants. In the present case, a reading of the issues would show that the onus of issue Nos.2 and 3 was only on the defendants. Plaintiff is not seeking to lead evidence in rebuttal under the aforesaid issue i.e. issue Nos.2 and 3. The plaintiff is wanting to lead evidence under issue No.1. Onus to prove issue No.1 was on the plaintiff. The plaintiff has already availed that opportunity.

Learned trial Court was further incorrect in recording that the signatures on the entries have been denied for the first time in the cross-

examination. In the written statement filed by the defendants, pleadings of the plaintiff in para No.5 of the plaint were not admitted rather denied. Therefore, it was for the plaintiff to lead evidence while leading his affirmative evidence.

In view of the discussions made above, the impugned order passed by the trial Court is found to be erroneous, therefore, set aside.

Revision petition is allowed.

08.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No