

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CR No. 4709 of 2017

Date of decision : 06-09-2017

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Sandeep Kumar

.....Petitioner

Versus

Ashok Kumar

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Vishal Sharma, Advocate for the petitioner.

Mr. Sanjiv Kumar Arora, Advocate for the respondent/caveator.

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RITU BAHRI, J.

Present revision petition has been filed under Article 227 of the Constitution with a prayer for setting aside the order dated 5.5.2017 passed by the Additional Civil Judge (Senior Division), Ferozepur, whereby the objection petition dated 30.3.2017 filed by the defendant/petitioner was dismissed and the plaintiff/respondent was allowed to examine the expert in rebuttal evidence.

Plaintiff/respondent Ashok Kumar filed a suit seeking decree of specific performance of agreement to sell dated 29.3.2012 regarding the shop in question. Defendant/petitioner in his written statement claimed the alleged agreement to be false and fictitious document. Issues in the present

case were framed far back on 15.12.14. Specific issue no. 5 was framed, “*Whether agreement in question is false and forged document? OPD*”.

The onus to prove this issue was upon the defendant/petitioner, to which he led his evidence. The plaintiff/respondent sought to rebut the evidence of the defendant/petitioner by examining the handwriting expert. An application was filed by the plaintiff/respondent seeking permission to take the photographs of the signature of the defendant/petitioner on the agreement to sell in question for the purpose of comparison with his standard signatures by the expert in rebuttal evidence. This application was allowed on 30.3.2017 wherein the plaintiff/respondent was permitted to take the photographs of the disputed signatures as well as the standard signatures of the defendant/petitioner for purpose of comparison. The defendant/petitioner, at this stage, filed the written objections. The objections have been dismissed on the ground that the onus to lead the evidence on issue no. 5 was on the defendant/petitioner. After leading his evidence, the plaintiff/respondent would then get an opportunity to lead evidence in rebuttal and he has every right to rebut the evidence led by the defendant/petitioner in support of his claim.

Heard counsel for the parties. A Co-ordinate Bench of this Court in the case of ***Jaswant Singh Vs. Jagjit Singh, 2016(3) PLR 15*** held that in a case where the Court has framed an issue relating to forged character of the document and placed whether correctly or wrongly burden of proof on the defendant to that extent, the plaintiff certainly is entitled to bring rebuttal evidence. Evidence permitted to be given through an expert will be given as an additional evidence. If the defendant still wants to give any more evidence with reference to such evidence otherwise through any

expert, he will be entitled to do so.

In another judgment in the case of ***Premjit Kalia vs. Santokh Singh and others 2011 (1) RCR (Civil) 217***, onus to prove issue was on the contesting defendant. Contesting defendant adduced his evidence. Plaintiff in order to disprove execution of agreement to sell as set up by defendant requested examining of expert witness. It was held by this Court that the plaintiff is entitled to lead evidence in rebuttal in the form of expert witness on the issue the onus of which was on the defendant.

In another judgment in the case of ***Pappu @ Rai Singh vs. Smt. Chander Wati and others, 2012(13) RCR (Civil) 198***, it was held that if during the course of leading evidence on the issues the onus whereof was on the plaintiff any statement was made with regard to issues the onus of which is on the defendants, the same shall not mean that plaintiff had in fact led or concluded his evidence on those issues as it is only after the defendant has led his evidence that plaintiff will come to know the same and get an opportunity to rebut the same. Plaintiff cannot presuppose the evidence which is to be led by the defendant on the issues, the onus whereof is on him.

The case of Sukhwinder Pal Singh vs. Bhupinder Kaur (CR No. 4628 of 2013) decided on 17.2.2014 was on different facts as in that case it was the plaintiff who had led her evidence in affirmative on the issue on which the onus was on her to lead the evidence. However while leading her evidence in the affirmative, she failed to examine any handwriting expert. It was held by this Court that merely because the defendant had examined a handwriting expert while leading his evidence would not give right to the plaintiff to examine a handwriting expert while leading her

evidence in rebuttal.

In the present case, the onus to lead evidence on issue no.5 was on the defendant/petitioner and after leading his evidence, the application of the plaintiff/respondent for leading rebuttal evidence has been rightly allowed by the trial court and the objections filed by the defendant/petitioner have been rightly dismissed by the impugned order dated 5.5.2017.

In view of all that has been discussed above, present revision petition is dismissed.

06.09.2017

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(RITU BAHRI)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No