

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CR No.5301 of 2015
Date of decision:3.2.2017**

Budh Singh

...Petitioner

Versus

Mohinder Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.HPS Ghuman, Advocate for the petitioner.
Mr.S.S.Rangi, Advocate for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the orders dated 7.7.2015 and 27.7.2015 (Annexures P-1 and P-2 respectively) passed by the learned trial Court, whereby his application for producing the Fingerprint and Handwriting Expert in his rebuttal evidence as well as his application for additional evidence were dismissed, plaintiff has approached this Court by way of present revision petition under Article 227 of the Constitution of India for setting aside the impugned orders.

Notice of motion was issued and in the meantime, passing of final judgment was stayed by this Court.

Learned counsel for the petitioner, while placing reliance on the judgments of this Court in **Kulwant Singh Vs. Chand Singh etc., 2015 (3) PLR 129, Jaswinder Singh Vs. Rajwant Kaur and others, 2014 (2) Law Herald 1138, CR No.203 of 2012 (Kartar Kaur Vs. Darshan Singh) decided on 25.7.2014, CR No.5628 of 2013 (Gurmeet Singh Vs. Satgur Singh and others) decided on 17.9.2013, CR No.701 of 2011 (Darshan Singh and others Vs. Baljinder Kaur and others), decided on 9.10.2013,**

CR No.2878 of 2013 (Naresh Kumari Vs. Sh.Ajmer Singh and another) decided on 20.11.2013, CR No.7143 of 2011 (Ranvir Singh Vs. M/s Dashmesh Traders, Kup Kalan) decided on 9.12.2013 and CR No.884 of 2014 (Hazur Singh Vs Chander Shekhar) decided on 5.2.2014, submits that once the defendants-respondents prayed for framing additional issue and it was framed at their instance as Issue No.5 (A) by the learned trial Court vide order dated 23.3.2015 and defendants produced their evidence, with a view to discharge their onus on additional Issue No.5 (A), by examining Fingerprint and Handwriting Expert, the plaintiff would be entitled to lead his evidence in rebuttal. He further submits that at the time of leading evidence by the defendants on the above-said Issue No.5(A), there was no occasion for the plaintiff-petitioner to reserve his right under Order 18 Rule 3 of the Code of Civil Procedure ('CPC' for short). However, the learned trial Court failed to appreciate this material aspects of the matter, while passing the impugned orders and the same are liable to be set aside.

On the other hand, learned counsel for the respondents places reliance on two judgments of this Court in **Ram Kumar Vs. Raj Kumar and others, 2014 (2) PLR 536** and **Avtar Singh and another Vs. Baldev Singh and others, 2015 (5) RCR (Civil) 625**, to contend, that the learned trial Court committed no error of law, while passing the impugned orders and the same deserve to be upheld. He prays for dismissal of the instant revision petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered

opinion that keeping in view the peculiar facts and circumstances of the case noticed hereinabove, impugned orders passed by the learned trial Court cannot be upheld. Revision petition deserves to be accepted for the following more than one reasons.

It has gone undisputed before this Court that whatever the issues were framed initially, plaintiff produced and closed his evidence. After closing the evidence of the plaintiff-petitioner, additional issue came to be framed by the learned trial Court vide above-said order dated 23.3.2015 (Annexure P-5) at the instance of defendants-respondents. Defendants led their evidence on the additional issue because onus to prove this issue was on the defendants. Admittedly, this additional issue was not there when the plaintiff-petitioner was leading his evidence.

It is also not in dispute that while leading their evidence on additional Issue No.5 (A), defendants with a view to discharge their onus qua additional issue, examined Fingerprint and Handwriting Expert. Although, this expert examined by the defendants was cross-examined by the plaintiffs, yet that fact alone will not disentitle the plaintiff to lead his evidence in rebuttal qua the additional issue. It is so said because there was no occasion for the plaintiff to reserve his right, invoking the provisions of Order 18 Rule 3 CPC qua additional Issue No.5 (A), at the time of leading his evidence, because said additional issue came to be framed by the learned trial Court at a later stage, after conclusion of the evidence by the plaintiff.

A bare perusal of the impugned orders would show that the learned trial Court fell in serious error of law, while passing the impugned orders because the above-said peculiar fact situation, obtaining on the record of the case, could not be properly appreciated by the learned trial

Court. Had the defendants not applied for framing of additional issue and said additional issue No.5 (A) might have not been framed by the learned trial Court at the instance of the defendants, in that situation plaintiff would have no right to lead his additional evidence. However, in view of the above-said undisputed fact situation, plaintiff was certainly entitled to lead his evidence in rebuttal by producing Fingerprint and Handwriting Expert qua additional issue No.5 (A). Under the circumstances of the present case, denial of opportunity to the plaintiff-petitioner to lead his evidence in rebuttal on additional issue framed by the learned trial Court after closing his evidence in affirmative, would amount to denial of equal opportunity to him, thereby causing a manifest injustice, which will be against the basic principles of natural justice as well.

The view taken by this Court also finds support from the judgments of this Court in **Kulwant Singh Vs. Chand Singh etc., 2015 (3) PLR 129, Jaswinder Singh Vs. Rajwant Kaur and others, 2014 (2) Law Herald 1138, CR No.203 of 2012 (Kartar Kaur Vs. Darshan Singh) decided on 25.7.2014, CR No.5628 of 2013 (Gurmeet Singh Vs. Satgur Singh and others) decided on 17.9.2013, CR No.701 of 2011 (Darshan Singh and others Vs. Baljinder Kaur and others), decided on 9.10.2013, CR No.2878 of 2013 (Naresh Kumari Vs. Sh.Ajmer Singh and another) decided on 20.11.2013, CR No.7143 of 2011 (Ranvir Singh Vs. M/s Dashmesh Traders, Kup Kalan) decided on 9.12.2013 and CR No.884 of 2014 (Hazur Singh Vs Chander Shekhar) decided on 5.2.2014.**

As far as the judgments relied upon by the learned counsel for the respondents are concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, none of them has

been found to be of any help to the respondents, being clearly distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in Ganeshi Lal's case (supra), reiterating its view taken in Amrit Lal Manchanda's case (supra) and Mohd. Illiyas's case (supra), which can be gainfully followed in the present case, read as under:-

11. "12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable

to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

*Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. **Ed.** See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.*

12. 15....Courts should not place reliance on

decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India VS. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

Reverting to the peculiar facts and circumstances of the case in hand referred to hereinabove, it is unhesitatingly held that the learned trial Court altogether ignored its own judicial record, particularly the order dated 23.3.2015, whereby additional issue was framed at the instance of the

defendants, while passing the impugned orders. Under these circumstances, it can be safely concluded that since the impugned orders passed by the learned trial Court have been found suffering from patent illegality and perversity, the same cannot be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the plaintiff-petitioner is entitled for leading his evidence in rebuttal, however, only qua additional issue No.5 (A), including by producing Fingerprint and Handwriting Expert. Both the impugned orders are hereby set aside.

Consequently, the learned trial Court is directed to grant two effective opportunities to the plaintiff-petitioner to lead his rebuttal evidence, in accordance with law.

Resultantly, with the above-said observations made and directions issued, the instant revision petition stands allowed, however, with no order as to costs.

3.2.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No