

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

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Date of decision: 10.11.2017.

CR 6582 of 2015

Sukhdev Singh

..... Petitioner

Versus

Gurmeet Kaur

.....Respondent

CR 6583 of 2015

Sukhdev Singh

..... Petitioner

Versus

Gurmeet Kaur

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Ms Mamohan Kaur, Advocate
 for the petitioner

None for the respondent

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid petitions as identical questions of law and facts are involved for adjudication.

For the sake of convenience, facts are taken from Civil Revision No. 6582 of 2015.

Counsel for the petitioner would contend that Gurmeet Kaur-respondent/plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 29.03.2005 in respect of land measuring 6 kanals 3 marlas, detailed in head note of the plaint with alternative relief for recovery of Rs.12,75,000.00.

On completion of pleadings, the trial Court framed issues

reproduced in para 5 of the petition. The respondent/plaintiff adduced her evidence in respect of case set up in the plaint. Subsequent thereto, the petitioner/defendant adduced evidence to rebut evidence of the respondent/plaintiff and substantiate his plea that the agreement to sell has not been executed by him. Later, the instant application was filed by the respondent/plaintiff for permission to examine Hand-Writing Expert in rebuttal on the basis of comparison of standard signatures *viz-a-viz* disputed signatures of the petitioner, on the agreement to sell. It is argued with vehemence that neither the respondent/plaintiff reserved right to lead evidence in rebuttal at any point of time before the petitioner/defendant started adducing evidence nor there is an issue, onus whereof has been placed upon the petitioner in respect whereof, the respondent can adduce evidence in rebuttal. It is argued with vehemence that the order impugned cannot stand the test of judicial scrutiny in the face of ratio laid down by the Division Bench of this Court in ***Avtar Singh and another v Baldev Singh and others, 2015 (1) PLR 230.***

There is no representation on behalf of the respondent who was earlier being represented by a counsel.

I have heard counsel for the petitioner, perused the paper book particularly application filed by the respondent (Annexure P6), reply thereto and the order impugned.

Perusal of the impugned order leaves no manner of doubt that there is nothing on record suggestive of the fact that the respondent/plaintiff while closing his evidence reserved her right to lead evidence in rebuttal. This apart, reading of the issues framed by the trial Court would indicate that there is no such issue of which the onus has been placed upon the petitioner/defendant in respect whereof the respondent can be allowed to

examine an expert to rebut evidence adduced by the petitioner. The Trial Court has allowed the application primarily on the ground that in order to reach at right conclusion and for proper adjudication, an opportunity should be given to the plaintiff to examine Hand-Writing Expert in rebuttal. The trial Court has altogether failed to appreciate the provisions of Order 18 of the Code of Civil Procedure as well as Division Bench judgment of this Court in Avtar Singh's case (supra), therefore, committed a serious error by allowing application of the respondent/petitioner. In this view of the matter, I find merit in contention of the petitioner that the impugned order is erroneous on the face of it and liable to be set aside.

For the foregoing reasons, the petitions are allowed and impugned order (s) is set aside. However, nothing stated herein-before shall be construed as an expression of opinion on merits of the case.

Photocopy of this order be placed on the file of connected case.

(Rekha Mittal)
Judge

10.11.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No