

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.5509 of 2015(O&M)
Date of Decision-26.09.2018

Charan Singh and another ... Petitioners
Versus
M/s Vikram Electric Equipment Pvt. Ltd. and another
... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Kunal Dawar, Advocate
for the petitioners.

Mr. Harsh Bungar, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 03.08.2015 passed by Civil Judge (Senior Division), Gurgaon, whereby application moved by the plaintiff/respondent No.1 for examination of handwriting and fingerprint expert in rebuttal was allowed.

[2]. Plaintiff/respondent No.1 filed a suit for recovery against petitioners and one Shivraj Singh Dabra with the pleadings that the plaintiff is a private limited company. Defendants No.1 and 2/petitioners had approached the plaintiff, claiming themselves to be co-owners of the land to the extent of their shares. Defendants No.1 and 2 had represented to the plaintiff and defendant No.3 that they were owners of the land, which was free from all encumbrances. They had conveyed that

they were having marketable title in respect of land and were competent to sell the same. The negotiations were held between the plaintiff and defendants No.1 and 2/petitioners. Defendants No.1 and 2/petitioners insisted that they would get prepared the agreement to sell pertaining to the land owned by them in the revenue estate of village Hayatpur, Tehsil and District Gurgaon. The offer of defendants No.1 and 2 was accepted by the plaintiff. Plaintiff was in fact desirous to purchase the land. Defendants No.1 and 2/petitioners assured the plaintiff that they would execute formal agreement to sell after getting the land partitioned and the amount would be given by way of account payee cheques in favour of defendants No.1 and 2/petitioners and they undertook not to encash the same until the agreement was executed. Plaintiff through its broker i.e. defendant No.3 had handed over the cheque bearing No.242113 dated 02.08.2006 for Rs.13,36,000/- drawn on ABN Amro Bank, Gurgaon to defendant No.1 and cheque bearing No.242112 dated 02.08.2006 for Rs.13,36,000/- drawn on ABN Amro Bank, Gurgaon to defendant No.2. The aforesaid cheques were issued by the broker of the plaintiff i.e. defendant No.3 Shivraj Singh Dabra.

[3]. Plaintiff further asserted that defendants No.1 and 2 had conveyed to the plaintiff that they would soon get the land partitioned and demarcated and thereafter, they will execute the agreement to sell. Despite repeated requests, defendants No.1 and 2/petitioners did not get prepared the agreement to sell and

from the bank statement, the plaintiff came to know that defendants No.1 and 2 had proceeded to encash the cheques on 14.08.2006. Total amount of Rs.26,72,000/- was encashed by defendants No.1 and 2 which was paid towards advance money for sale of the land in question. On inspection of revenue record, the plaintiff came to know that defendants No.1 and 2 had played fraud with the plaintiff and defendant No.3. Defendants No.1 and 2 were not even owners of the entire land. Part of the land had already been acquired by the Government and defendants No.1 and 2 have not disclosed the aforesaid fact with *mala fide* intention in order to cheat the plaintiff and defendant No.3 in a fraudulent manner. Defendants No.1 and 2 had sold their shares in the aforesaid land to one M/s Corporate Axim Private Limited vide sale deeds dated 08.01.2007 and 01.02.2007 without knowledge and notice of the plaintiff and defendant No.3.

[4]. Suit for recovery of earnest money of Rs.26,72,000/- along with interest @ 12% per annum from the date of payment along with *pendente lite* and future interest was filed.

[5]. The suit was contested by the defendants. Written statement was filed by defendant No.2, wherein it was disclosed that defendant No.2 is a co-owner in joint possession with defendant No.1. Defendant No.3 Shivraj Singh Dabra approached defendant No.2 and showed his intention to purchase the land by showing himself to be prosperous buyer

and would give value of the land. Defendant No.2 accepted the proposal of defendant No.3 and became ready to sell the land to defendant No.3 @ Rs.1,56,00000/- per acre. Defendant No.3 paid money to the tune of Rs.13,36,000/- to defendant No.2. It was agreed between defendants No.2 and 3 that sale deed would be executed on or before 21.08.2006. Defendant No.2 further claimed that he went to the office of Sub Registrar for getting the sale deed executed in favour of defendant No.3 on the date fixed and waited since 9 AM to 5 PM, but defendant No.3 did not turn up. Defendant No.2 got an affidavit attested from the Sub Registrar as a taken of his presence and thereafter, he issued a legal notice to defendant No.3 through his counsel calling upon defendant No.3 to execute the sale deed on or before 28.09.2006. Defendant No.3 did not turn up on 28.09.2006 and defendant No.2 got his presence marked before the Sub Registrar by way of affidavit. The suit of the plaintiff was denied on the assertion that there was no agreement between the plaintiff and defendants No.1 and 2. The understanding was only with defendant No.3. Other allegations of the plaint were denied.

[6]. Replication to the written statement of defendant No.2 was filed by the plaintiff wherein allegations of the plaint were reiterated. The factum of the plaintiff being engaged in buying of land in District Gurgaon for development was highlighted. Plaintiff used to provide land to other interested parties for development.

Plaintiff has also entered into consolidation agreement with

defendant No.3 Shivraj Singh Dabra for aforesaid purpose. As per terms and conditions of said agreement, Shivraj Singh Dabra has entered into various agreements for purchase of land himself or through his agents with landowners on behalf of the plaintiff and the funds towards payment of earnest money in the said agreements were provided by the plaintiff and sale deeds of land so tied up in the aforesaid agreements were to be executed in favour of the plaintiff or its nominee on payment of balance sale consideration. Plaintiff also asserted in the replication that as per terms and conditions of the said agreement, the plaintiff transferred the funds to defendant No.3 for making payment of earnest money to the landowners towards agreement of purchase of the land. Defendant No.3 has also filed his written statement admitting the claim of the plaintiff.

[7]. Plaintiff after leading its evidence in affirmative, filed an application for permission to lead rebuttal evidence on the ground that defendant No.1 has examined Vijay Kumar Rustagi, Handwriting and Fingerprints Expert as DW 3 who has filed his report along with documents Exs. DW 3/1 to DW 3/22. The report of the expert is claimed to be false, therefore, plaintiff sought to lead evidence of expert to rebut the report of DW 3 Vijay Kumar Rustagi, Handwriting and Fingerprints Expert examined by the defendants.

[8]. The application has been opposed by defendants No.1 and 2 on the ground that the plaintiff has already closed its evidence without reserving its right to lead evidence in rebuttal. The expert examined by the defendants has already been cross examined by the plaintiff through its expert Naresh Kataria.

[9]. During evidence of the plaintiff, agreement to sell dated 08.04.2005 was produced as Ex.P6 besides power of attorney dated 20.09.2005 as Ex.P11 in the statement of PW 2. Defendants have examined Vijay Rustagi, Handwriting and Fingerprints Expert qua the disputed signatures on the aforesaid documents. The signatures on the aforesaid documents have not been denied in the written statement filed by the defendants, nor any pleadings were made to that effect.

[10]. Since there was no such stand taken in the written statement, examination of expert by the defendants for the first time in respect of such controversy would give right to lead evidence in rebuttal in favour of the plaintiff. The ratio laid down in **Surjit Singh and others Vs. Jagtar Singh and others, 2007(1) RCR (Civil) 537 DB, Jagdev Singh and others Vs. Darshan Singh and others, 2007(1) RCR (Civil) 794** and **Avtar Singh Vs. Baldev Singh, 2015(1) PLR 230** would not apply as at the time of leading affirmative evidence, there was no such denial in respect of genuineness of agreement to sell dated 08.04.2005 Ex.P6 and power of attorney dated 20.09.2005 Ex.P11.

Ordinarily, the plaintiff would have no right to lead evidence in rebuttal on an issue the onus of which was on the plaintiff itself. However, if the defendant introduces an event/evidence without taking any defence in the written statement, then the plaintiff has a right to rebut the same by examining the handwriting and fingerprint expert as at the stage of affirmative evidence, the plaintiff was not in the knowledge of such evidence which has been led by the defendants without making any such plea in the written statement. The evidence led by the defendants in a way is beyond pleadings and in these circumstances, the plaintiff has a right to examine handwriting and fingerprint expert in rebuttal evidence as leading of expert evidence by the defendants would be over and above the plea taken in the written statement. The aforesaid facts itself make the present case distinct and differentia as the fact that defendants have led evidence of expert beyond the pleadings in the written statement and examination of such expert could not have been anticipated by the plaintiff at the time of leading affirmative evidence. On the proposition, reference can be made to **CR No.638 of 2015** titled **Avdesh Pandey Vs. M/s Vikram Electric Equipment (Pvt.) Limited** decided on 25.04.2018 and **Baljit Singh Vs. Manjit Singh and others, 2013(23) RCR (Civil) 167.**

[11]. Since the expert has been examined by the defendants in the evidence and no plea of denial was taken in the written statement, therefore, examination of expert by the

defendants would make the issue rebuttable in nature. Replication is also part of pleadings by all necessary implications. The factum of disclosure of agreement with defendant No.3 even if taken to be a step after filing of the written statement, but still the same has to be rebutted in view of broad prospects of the case particularly when the pleadings in the plaint in terms of para No.5 are specific to highlight that defendant No.3 acted on behalf of the plaintiff as a broker.

[12]. In the light of aforesaid facts, I am of the view that the indulgence granted by the trial Court cannot be faulted with. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

26.09.2018
Prince

Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No