

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

**CR-6147-2016 (O&M)
Date of decision : 2.2.2018**

Dr. Dalbir Singh and another

..... Petitioners

Versus

Sandeep Sharma

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- M/s Sunil Panwar and Dhnanjay Singh, Advocates
for the petitioners.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Respondent has not come present, despite service.

Heard.

Impugned in the present revision petition is the order dated 30.8.2016 (Annexure P-1), passed by learned Additional Civil Judge, Senior Division, Panchkula vide which an application filed by plaintiff-respondent at the rebuttal stage for examining handwriting and finger print expert to rebut the evidence of defendants-petitioners was partly allowed.

A perusal of the plaint shows that plaintiff-respondent has filed a suit under Order XXXVII of the Code of Civil Procedure, 1908 for recovery of the amount of ₹ 50.00 lacs along with interest @ 15% per annum w.e.f. 1.6.2008 till the date of its actual realization on the basis of a receipt dated 1.12.2007. In the written statement, defendants-petitioners took the plea that receipt is a forged and fabricated document.

Learned trial Court vide order dated 1.10.2015 framed the following issues: -

1. Whether the defendants are liable to pay the suit amount to the plaintiff along with the interest @ 15 % per annum w.e.f. 1.6.2008 till realization ? OPP.
2. Whether the suit is not maintainable in the present form? OPD.
3. Whether plaintiff has no locus standi and or cause of action to file this suit? OPD
4. Whether the plaintiff is estopped by his own act and conduct from filing the suit? OPD
5. Whether the suit is barred by the law of limitation? OPD
6. Whether the suit is false and frivolous and is liable to be dismissed with special costs? OPD.

Plaintiff-respondent led the evidence in affirmative. Defendants-petitioners in evidence examined the handwriting and finger print expert and when the case was fixed for recording of rebuttal evidence, an application was filed by plaintiff-respondent on 29.11.2010 before the trial Court for leading rebuttal evidence by examining the handwriting and finger print expert.

Learned trial Court relying upon the judgment of this Court decided in ***Jasbir Singh vs. Gurdeep Singh, 2011(1) Law Herald 940***, allowed the said application vide order dated 30.8.2016, (Annexure P-1), the order impugned in the present petition.

I have heard learned counsel for the parties and perused the case file.

The authority of ***Jasbir Singh's case (supra)*** shows that in the said case, there was an *issue No. 5 "as to whether the agreement to sell dated 31.10.2000 is a forged and fabricated document? OPD*

Defendants-petitioners had led their evidence on the said issue and therefore in the given circumstances, learned Court had held that plaintiff is entitled to lead evidence in rebuttal.

In the present case, the position is different. In this case, receipt was produced by the plaintiff. Defendants claimed that it is forged and fabricated, which is in fact denial of execution of the receipt. Only *issue No. 1* was framed in this regard. Burden of proving the same was on the plaintiff-respondent, who led his evidence in affirmative. At that time, defendants were aware that plaintiff is claiming the receipt to be forged and fabricated document. Therefore, the evidence to prove the said receipt was to be led in affirmative. Thereafter, it was for the defendants-petitioners as to what evidence they want to lead in support of that plea. Defendants-petitioners among others chose to examine the handwriting and finger print expert. Such expert was examined and cross-examined. Now in rebuttal, in the absence of any issue regarding forgery, no evidence in rebuttal can be allowed to be examined as expert witness to counter the evidence of the expert witness examined by defendants-petitioners.

The authorities of *Jasbir Singh's case (supra)* was wrongly applied by the learned trial Court. As such, the impugned order dated 30.8.2016 (Annexure P-1), passed by learned Additional Civil Judge, Senior Division, Panchkula is set aside and the application filed by the plaintiff for examining the expert witness in rebuttal evidence on issue No. 1 is dismissed.

Revision is accordingly allowed.

(KULDIP SINGH)
JUDGE

2.2.2018

preeti

Whether speaking / reasoned

Yes

Whether Reportable:

No