

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

222

CR No.6295 of 2018

Date of decision: 30.11.2018

Sham Sunder Chopra

...Petitioner

Vs.

Balwinder Singh Arora and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. Abhinav Gupta, Advocate
for respondent No.3.

AMIT RAWAL, J.(ORAL)

The present revision petition is directed against the impugned order whereby the application submitted on behalf of the petitioner-plaintiff for permission to lead the additional evidence at the stage of final arguments, has been declined.

Mr. Raman Sharma, learned counsel appearing on behalf of the petitioner-plaintiff submits that the petitioner-plaintiff has filed the suit for recovery of ₹ 22 lacs against two defendants and third defendant Kartar Singh was impleaded later on as he was earlier under some misconception impleaded Manjit Singh Lamba of Jalandhar who had already expired. The suit was for recovery of the amount which has already been paid to the defendant. The plaintiff came to know about the witness of the agreement dated 17.08.2008 only at a later stage, when the application was moved

for the examination of expert regarding the signatures of the defendant from the various other documents to be compared with document which are also on record. In support of the aforementioned contentions he relied upon ratio decidendi culled out in the judgment of Hon'ble Supreme Court in Civil Appeal No. 2343-44 of 2017 titled as ***M/s Chakreshwari Construction Pvt. Ltd. Vs. Manohar Lal*** decided on 10.02.2017 to contend that in order to advance justice the technicality and procedure of law should not be come into way.

Per contra Mr. Abhinav Gupta, learned counsel appearing on behalf of the respondent submitted that the aforementioned additional evidence is to fill up the lacuna left in evidence. Plaintiff did not reserve any right at the time of closing the evidence. The aforementioned evidence was to improve the infirmity left in pleading. In support of the aforementioned contentions counsel relies upon number of judgments.

I have heard learned counsel for the parties and perused the paper book and of the view that there is no force or merit. From the perusal of the averments it can be made out that the plaintiff had been pursuing the suit without any material and evidence. Aforementioned procedure adopted is totally unknown to the settled principles of law as procedure with regard to the production of documents and various other aspects have been laid down in the Code of Civil Procedure.

In this view of the matter, I would refer to Order 18 Rule 3 of the Code of Civil Procedure which reads as under:-

"3. Evidence where several issues._Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case".

The aforementioned interpretation of provisions of law came to be debated on many occasions and by a Division Bench of this Court in, **Avtar Singh and Another vs. Baldev Singh and Others 2015(5) RCR Civil 625**. The relevant part reads as under:-

"5. As regards certain exigencies that have been illustrated, where the plaintiff shall be completely deprived of an opportunity to lead evidence in rebuttal without being at fault, in our view, we cannot view or visualise any such situation, as is being demonstrated hereinafter.

Illustration 1, that if there is no issue, the onus of which is upon the plaintiff, there would be no occasion for plaintiff to lead evidence in affirmative and consequently an opportunity to reserve a right to lead evidence in rebuttal to the evidence led by the defendant. Any such perception, to our minds, is wholly unfounded. Thus, it

would be crucial, at this stage, to refer to the provision of Order 18 Rule 1 CPC which reads as thus:

1. Right to being-The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

A bare reading of the afore-reproduced provision reveals that it is always the plaintiff, who has to begin the evidence, minus a situation, as conceived in the provision itself. Meaning thereby, if the defendant begins the evidence first, then, he is the party beginning and plaintiff is the other party, therefore, after the party beginning leads his evidence, the plaintiff would certainly have a right to lead evidence in rebuttal being the other party.

Illustrations 2 to 4, suffice it to say, provisions of Order 18 Rule 3 CPC, not only promise a right to the plaintiff to lead evidence but also extends an option to the plaintiff to either lead his entire evidence on all the issues or after leading his evidence in affirmative, reserve a right to lead rebuttal evidence by way of an answer to the evidence that is to be lead by the defendant. Therefore, if the plaintiff intends to lead rebuttal evidence only after the defendant has led evidence as regards the issues, onus of which is upon the defendant, he can exercise his option and reserve his right.

Illustration 5, indeed is not a situation or an exigency because of which plaintiff shall suffer or stand deprived of a right to lead rebuttal evidence. In fact, that is the view expressed and the interpretation drawn by the learned Single Judge, which we would address and deal with hereinafter, while answering the specific issues that have been formulated for our consideration.

6. Division Bench of this court in Surjit Singh's case

(supra), while relying upon a decision of an earlier Division Bench in Jaswant Kaur and another v. Devinder Singh, AIR 1983 Punjab and Haryana 210 (DB) and a Single Bench in National Fertilizers Ltd. v. Municipal Committee, Bhatinda and another, AIR 1982 Punjab and Haryana 432 (1), crystallized the true import of the provisions of Order 18 Rule 3. and the principle of law that has been enunciated is that plaintiff has the option to lead his entire evidence on all the issues, and in case, he intends to lead rebuttal evidence or answer the evidence that is to be led by the defendant, as regards the issues the onus of proof of which is upon the defendant, he shall have to reserve his right. Further, he shall have to exercise his option either when he closes his evidence in affirmative or in any case before the other party begins its evidence. But if he fails to reserve any such right, in terms of the provision of Order 18 Rule 3 CPC, his right to lead evidence in rebuttal would stand forfeited."

The additional evidence cannot be said to be essential as they are not subsequent development after the filing of the suit. This piece of evidence could have been led had the plaintiff been vigilant. Thus the ratio settled above could not be disputed.

No ground for interference is made out.

The present petition is dismissed.

November 30, 2018

Poonam (II)

**(AMIT RAWAL)
JUDGE**

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| 1. | Whether reportable? | Yes / No |
| 2. | Whether reasoned / speaking? | Yes / No |