

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

Sr. No.119

C.R. No.6767 of 2018

Date of decision: 05.10.2018

Kuldeep Singh

....Petitioner

versus

Gurmail Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Anish Gautam, Advocate
for the petitioner.

* * *

DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 25.09.2018 passed by the Civil Judge (Senior Division), S.A.S. Nagar, Mohali (for short – 'the Trial Court') dismissing the application filed by the petitioner to restrain the respondent from leading rebuttal evidence.

The facts, in brief, leading to the filing of the present petition are that the respondent filed a suit seeking therein recovery of ₹61,18,000/-. On being put to notice, the petitioner, who was the defendant in the suit, appeared before the Trial Court and filed a written statement in which after admitting receipt of the principal amount from the respondent, he submitted that the amount sought to be recovered from him had been returned by him through cheques for ₹15,00,000/- and the remaining amount of ₹46,00,000/- in cash. In view of the above dispute, the Trial Court framed the following sole issue:-

“Whether the defendant has paid the entire

amount?OPD”

Since there was only one issue framed in the suit, the onus of which was placed on the petitioner/defendant, in the first instance the petitioner/defendant led his evidence after which the matter was posted by the Trial Court for rebuttal evidence. At that time, the respondent/plaintiff led his evidence during the course of which after having examined two witnesses, he sought to lead expert evidence. The petitioner then filed an application before the Trial Court to preclude the respondent from leading expert evidence in rebuttal. The said application was dismissed by the Trial Court occasioning the filing of the present petition.

Learned counsel for the petitioner submits that the respondent could have not allowed to lead expert evidence in rebuttal and in support of his contentions reliance was placed by him upon the judgment of this Court rendered in **Ram Kumar versus Raj Kumar and others, 2014 (2) PLR 536.**

The submissions made by learned counsel for the petitioner have been considered but no merit in the same is found.

The sole issue framed by the Trial Court was whether the petitioner/defendant had repaid the amount, the recovery of which had been sought by the respondent/plaintiff through his suit. The burden to prove such issue was placed upon the petitioner/defendant. Since only one issue was framed by the Trial Court and onus to prove the same was placed on the petitioner, in the very first instance not the plaintiff but the defendant led his evidence in the course of which amongst other evidence, he produced a receipt allegedly given by the respondent/plaintiff as a token of having received the amount in question from the petitioner. In response to the

evidence led by the petitioner, especially the aforesaid receipt produced by him, the respondent has every right to lead evidence in rebuttal which may include expert evidence. If such a line of reasoning is not adopted, the stand taken by the defendant would virtually be allowed by default. Such a procedure cannot be permitted.

The facts in **Ram Kumar's case (supra)** have been gone through and the same are distinguishable from the facts of the case in hand as in that case, initially the plaintiff had led his evidence in the affirmative and therefore, he was not allowed to lead expert evidence in rebuttal.

In view of the above, no error is found in the impugned order.

Dismissed.

(DEEPAK SIBAL)
JUDGE

October 05, 2018
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No