

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

**Civil Revision No.8361 of 2017
Date of Decision:-12.01.2018**

Sanjay Sarin and another

...Appellants

Versus

Jaswant Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vikas Cuccria, Advocate
for the petitioners.

Mr. Paramjit Singh Saini, Advocate
for respondents No.1,2 and 4.

Mr. I.P.S. Bains, Advocate
for respondent No.3.

AMIT RAWAL J.(Oral)

The present petition is directed against the order dated 02.11.2017 whereby the application of the plaintiff for examining the Hand Writing Expert in rebuttal evidence has been rejected.

Mr. Vikas Cuccria, Advocate learned counsel for the petitioners-plaintiffs submits that a suit seeking recovery of an amount of Rs.60,00,000/- i.e. double the amount of earnest money as per the terms and conditions of the agreement to sell dated 07.2.2011 was filed. As per Clause 4 the defendants i.e. the seller were to obtain the NOC from the

office of the Estate Office before the date fixed for execution/registration of the sale deed. There is specific plea in para 9 of the plaint with regard to the submission of an application for NOC but later on, defendants had withdrawn the same. The aforesaid averment was vaguely denied. The plaintiff while completing the evidence had reserved the right to lead the evidence in rebuttal as per the statement dated 24.8.2016 suffered before the trial Court. The defendants in cross-examination were specifically confronted with the file summoned from the Estate Office, Chandigarh with regard to the contents of the application, but feigned (ignorance) with regard to their signatures. It is in these circumstances the application aforementioned was moved. No doubt alternative prayer for examining the Hand Writing Expert by way of additional evidence was also made. Though it could be rebuttable and not an additional evidence, thus he confines his prayer to the contents of the present application against declining of relief of rebuttal evidence.

Learned counsel appearing for respondent No.3 submitted that application with a prayer of additional evidence/ rebuttal are contradictory to each other and therefore cannot be entertained and therefore rightly dismissed. There is no rebuttal issue. The factum of the withdrawal of application for grant of NOC was in the knowledge of the plaintiff and therefore they were required to be seek evidence in affirmative.

The law on this point is very clear. Reliance has been placed on by this Court in **Ram Kumar vs. Raj Kumar and others 2013(54) RCR (Civil) 308.** With regard to the maintainability and the multifarious

prayer, the reliance has been placed on M/s Satyam Steel vs. Smt. Sarla and another 2017(1) RCR (Civil) 902 to submit that it would be in the domain of the trial Court to examine the issue on the point of bringing the evidence on record but not in the mode and manner sought to be projected by the petitioners-plaintiffs and thus urges this Court for dismissal of revision petition by upholding the order under challenge.

I have heard learned counsel for the parties and perused the paper book.

Relevant para 9 of the suit read as under :-

“9. That the plaintiffs again approached the defendants requesting them not to resile from the contract but to honour the same. The plaintiffs again made a request through Mr. Ashit Manchanda calling upon the defendants to honour their litigation and register the sale deed in terms of the agreement dated 07.2.2011. The defendants agreed to the request and accordingly applied to the Estate Officer for grant of NOC. However to the utter shock and surprise of the plaintiffs the defendants withdrew the said application with the false allegation that the same has not been signed by them.”

Relevant para 9 of the written statement filed on behalf of defendant Nos.1,2 and 4 read as under :-

“9. Para 9 of the plaint is wrong and hence denied.”

The statement dated 24.8.2016 made by the petitioner-plaintiff whereby petitioner-plaintiff had closed the evidence reserving his right to lead the evidence in rebuttal read as under :-

“I close my plaintiff evidence in affirmative and reserve my right for rebuttal evidence if any.”

The law on the point of rebuttal evidence had been a debatable issue before the Division Bench of this Court in Surjit Singh vs. Jagtar Singh 2007(1) RCR (Civil) P & H 537 (DB) and Jagdev Singh vs. Darshan Singh 2007 (1) RCR (Civil) 794. The aforesaid judgment was rendered by relying upon the judgment rendered in Jaswant Kaur and another vs. Devinder Singh AIR 1983 P&H 210. Again a dispute arose with regard to certain contingencies and eventualities which were not taken care of in the aforesaid judgments and the matter was referred to the Division Bench and the Hon'ble Division Bench in Avtar Singh and another vs. Baldev Singh and another 2015(5) RCR (Civil) 625 formulated the following three questions for determination as under :-

- “(1) Whether it is mandatory for the trial Court to provide an opportunity to the plaintiff to lead evidence in rebuttal only in those cases where he had reserved his right of rebuttal ?
- (2) Whether plaintiff can independently lead evidence in rebuttal over such issues, the onus of which is purely on the defendant ?
- (3) Whether Rule 3 Order 18 of the Code if read in conjunction with Order 18 Rule 1 of the Code widens the scope of evidence in rebuttal ?”

However, the question No.1 which would be squarely applicable by the Division Bench is as under :-

“Q1. Whether it is mandatory for the trial Court to provide an opportunity to the plaintiff to lead

evidence in rebuttal only in those cases where he had reserved his right of rebuttal?

Ans. 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 P&H 210 and a Single Bench in **National Fertilizers Ltd. v. Municipal Commtee, Bhatinda and another**, AIR 1982 P&H 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 statement dated 24.8.2016 whereby the petitioner-plaintiff reserved his right to lead evidence is squarely covered as per judgments *ibid*. In my view examination of an expert in the rebuttal evidence when the defendant refused to admit his signatures on the application submitted for obtaining NOC during the course of the day, is essential. The judgments relied upon by learned counsel for the respondents in **M/s Satyam Steel's** case and **Ram Kumar vs. Raj Kumar & others** (supra) would not be

applicable. Once the counsel for the petitioner had confined his prayer to the relief in the application reserving rebuttal evidence, therefore, the judgment rendered in **M/s Satyam Steel vs. Smt. Sarla and another** (supra) seeking relief of additional evidence alongwith rebuttal evidence would also not be applicable.

For the reasons aforementioned, the order under the challenge is set aside and the revision petition stands allowed. The petitioner is at liberty to lead his evidence by examining the Hand Writing Expert to verify the signatures of the defendant(s) on the application submitted for obtaining NOC to the Estate Office in accordance with law and the respondent-defendant would also have a right to cross-examine the witness and lead evidence thereto.

January 12, 2018
Vijay Asija

(**AMIT RAWAL**)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No