

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

**CR No.6061 of 2018(O&M)
Date of Decision: 02.12.2019**

Rakesh Kumar

.....Petitioner

Versus

Charanjit Kaur and others

.....Respondents

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

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

None for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1]. Challenge is to the order dated 31.08.2018 passed by Civil Judge (Junior Division), Amritsar, vide which petitioner was disallowed to examine himself as PW-6 and his witness of agreement to sell dated 27.05.2003 as PW-7.

[2]. Plaintiff/petitioner filed a suit for specific performance of agreement to sell dated 27.05.2003 executed by Pritam Singh in his favour. During course of trial, the plaintiff/petitioner examined himself as PW-1 and one Ravi Kumar as PW-2. Though they were partly cross-examined, but remaining cross-examination

could not be done and the evidence of the petitioner was closed by order of the Court on 09.07.2014. Against the said order, petitioner filed CR No.7618 of 2014, but the same was dismissed on 11.11.2014.

[3]. Thereafter, vide order dated 21.11.2014, two additional issues No.7-B and 7-C were framed by the trial Court. The onus of both the issues was on the defendants. At that stage, the case was fixed for rebuttal evidence of the petitioner. Defendants led evidence on the additional issues and closed their evidence.

[4]. In rebuttal, the plaintiff got himself examined as PW-6 and Ravi Kumar as PW-7. The rebuttal evidence was closed vide order dated 18.12.2014 by the trial Court. Against the order dated 18.12.2014 passed by the trial Court, defendants/respondents No.3 and 4, filed CR No.167 of 2015 in the High Court. In the aforesaid revision petition, in addition to the challenge to the order dated 18.12.2014 passed by the trial Court, it was also prayed that the evidence led by the petitioner by way of rebuttal in pursuance of order dated 18.12.2014 be also set aside.

[5]. Vide order dated 20.03.2018, CR No.167 of 2015 was dismissed by the High Court by observing that on conjoint reading of the order dated 18.12.2014 and the additional issues,

the onus of which was on the defendants, the plaintiff could not be prevented to lead evidence. Of course, that evidence ought to be in terms of rebuttal evidence only and would be confined to issues No.7-B and 7-C.

[6]. Thereafter, the application was filed by the defendants for non-consideration and cancellation of evidence of the plaintiff as PW 6 and Ravi Kumar as PW-7. The said application has been accepted by Civil Judge (Junior Division), Amritsar, vide the impugned order dated 31.08.2018 on the premise that the plaintiff has a right to lead evidence in rebuttal and that was confined to issues No.7-B and 7-C, but has no right to get himself and Ravi Kumar examined because they were already partly cross-examined as PW-1 and PW-2 and further cross-examination could not be done and the evidence was closed by order of the Court. Both the witnesses were earlier examined in affirmative and they cannot be examined again in rebuttal evidence.

[7]. Notice of motion was issued on 12.09.2018 for 06.12.2018 and on that very day, Mr. Jatin Salvan, Advocate accepted notice on behalf of the respondents. On the adjourned date i.e. 06.12.2018, none appeared on behalf of the respondents. Thereafter, on 09.04.2019, Mr. Rohit Verma, Advocate appeared for Mr. Jatin Salvan, Advocate for the

respondents and sought adjournment and the case was adjourned to 22.08.2019. On 22.08.2019, the turn of the case did not reach and the case was adjourned for today by order. Today, despite two pass overs, none appeared on behalf of the respondents. On the assistance of learned counsel for the petitioner, this Court proceed to hear the arguments.

[8]. Learned counsel for the petitioner stated that additional issues No.7-B and 7-C were framed after dismissal of CR No.7618 of 2014. The onus of the aforesaid issues was on the defendants. Defendants led their evidence on the aforesaid issues and thereafter, the plaintiff has a right to lead evidence in rebuttal and fresh examination of PW-1 and PW-2 as PW-6 and PW-7 in rebuttal is not hit by any provision of law.

[9]. Keeping in view the nature of additional issues framed and the evidence led by the defendants qua those additional issues, I am of the view that the plaintiff can lead evidence in rebuttal. Vide order dated 20.03.2018 passed by the Co-ordinate Bench in CR No.167 of 2015, the right of the plaintiff/petitioner to lead evidence in rebuttal was established. Perusal of grounds of the said revision petition would show that respondents No.3 and 4 herein filed the said revision petition i.e. CR No.167 of 2015 not only against the order dated 18.12.2014 passed by the trial Court, but it was also prayed that the

evidence led by the petitioner by way of rebuttal in pursuance of order dated 18.12.2014 be also set aside. Having not granted the said prayer to respondents No.3 and 4, defendants/respondents cannot turn around by way of filing subsequent application for the same relief.

[10]. For the reasons recorded hereinabove, I deem it appropriate to set aside the impugned order dated 31.08.2018 passed by Civil Judge (Junior Division), Amritsar. This revision petition is accordingly allowed. The evidence led by the plaintiff shall be read in evidence and the trial Court shall proceed to decide the suit on merits in accordance with law.

02.12.2019

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**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No