

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

112

CR No.87 of 2017 (O&M)  
Date of decision: 13.02.2019

Balraj Kumar

..... Petitioner

Versus

Prem Kumar and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. G.C. Shahpuri, Advocate  
for the petitioner.

Mr. Harsh Aggarwal, Advocate  
for the respondents.

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**ANIL KSHETARPAL, J. (ORAL)**

Plaintiff-petitioner is in the revision petition against the order passed by learned trial Court closing opportunity to lead rebuttal evidence.

Some facts are required to be noticed. The plaintiff filed a suit for dissolution of the partnership firm i.e. M/s Durga Rice and General Mills Village Danewala, Tehsil Malout and for winding up of the business of the firm as well as for rendition of accounts.

The suit was contested by the defendants by pleading that the firm in which the plaintiff was a partner has been dissolved by a dissolution deed dated 31.07.2007. After completion of pleadings, the following issues were framed:-

- “1. Whether the plaintiff is entitled to the decree of the suit of dissolution of the partnership firm? OPP
2. Whether the plaintiff is entitled for the relief of permanent injunction as being prayed for? OPP

3. *Whether the plaintiff has no locus standi to file the suit? OPD*
4. *Whether the plaintiff estopped by the act and conduct to file the present suit? OPD*
5. *Whether the suit is time barred? OPD*
6. *Whether the suit for rendition of account is not maintainable? OPD*
7. *Whether the plaintiff has suppressed the material facts and is mislead the Court? OPD*
8. *Whether the suit is bad for misjoinder and non-joinder of necessary parties? OPD”*

The plaintiff led his evidence by examining two witnesses and closed the same in affirmative on 01.03.2016. Thereafter, the defendants were given opportunity and they closed their evidence on 29.11.2016. In routine, the case was fixed for rebuttal evidence and arguments. The plaintiff filed an application for summoning 7 witnesses in rebuttal which was allowed in routine without issuing notice to the other party, permitting the plaintiff to summon the witnesses at his own responsibility. Since on 13.12.2016 as well as on 20.12.2016, no rebuttal evidence was produced, the Court closed the evidence. Correctness of the order has been challenged in the present revision petition.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the impugned order and the pleadings filed in the trial Court.

It is by now well settled law that the rebuttal evidence to the plaintiff is permissible only on the issues onus to prove whereof is on the defendant. It is the plaintiff who had filed a suit claiming decree for dissolution of the firm and rendition of accounts. The plaintiff while leading his evidence examined two witnesses. The plaintiff when led

evidence, he was in knowledge of the fact that the defendant has set up a dissolution deed dated 31.07.2007. In such circumstances, leading of the rebuttal evidence with regard to issues No.1 and 2 is not permissible to the plaintiff.

As regards issues No.3 to 8, they are formal and such issues do not require any evidence in rebuttal. Learned counsel for the petitioner-plaintiff has submitted that the attesting witness of the dissolution deed has been examined as DW-1 and therefore, he should be granted opportunity to lead rebuttal evidence. As noted above, the scope of rebuttal evidence is only on those issues onus to prove whereof is on the defendant. Reference in this regard can be made to the Division Bench judgment of this Court in the case of Jagdev Singh and others Vs. Darshan Singh and others, 2007(1) RCR (Civil) 794. Still further, pendency of the suit cannot be allowed to be prolonged under the garb of rebuttal evidence. Two opportunities have already been granted to the plaintiff. Earlier also the plaintiff was granted opportunity. The suit is pending for the last more than 6 years. The trial of the suit has to come to an end.

Hence, there is no scope for interference in the order passed by the Court.

Revision petition is dismissed.

**13.02.2019**

Dinesh Bansal

**( ANIL KSHETARPAL )  
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No