

(118) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.3023 of 2019

Date of decision: 26.08.2019.

Bhupinder Singh

.... Petitioner

Versus

Balbir Singh and another

.... Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Naresh Kaushal, Advocate for the petitioner.

B.S. Walia, (Oral).,

[1] Revision petition has been filed under Article 227 of the Constitution of India praying for setting aside of impugned order dated 03.04.2019 passed by the learned Addl. Civil Judge (Sr. Div.), Fatehgarh Sahib dismissing the application filed by the petitioner/plaintiff to lead evidence by way of rebuttal.

[2] Brief facts of the case leading to the filing of the revision petition are that the petitioner/plaintiff filed a suit for specific performance of agreement to sell dated 13.12.2005 executed by respondent/defendant No.1 in his favour. Respondent/defendant No.1 right from the very beginning raised a plea in the written statement that he had not executed any agreement to sell dated 13.12.2005 in favour of the petitioner/plaintiff. Issues were framed in the civil suit on 17.02.2009. However, the civil suit filed by the petitioner/plaintiff was dismissed in default by the learned trial Court vide order dated 10.01.2014 but CR No.5717 of 2017 filed by the petitioner/plaintiff was allowed vide order Annexure P/4 dated 16.11.2018, impugned order was set aside and the suit restored to its original number by granting opportunity to the petitioner/plaintiff to conclude his evidence within two months from 16.11.2018, subject to payment of costs of ₹ 20,000/- to

respondent/defendant No.1. Parties were directed to put in appearance before the learned trial Court on 06.12.2018.

[3] That, the petitioner/plaintiff concluded his evidence whereupon the case was fixed for evidence of the respondents/defendants. The respondents/defendants also closed their evidence where after the petitioner/plaintiff filed an application Annexure P/6 dated 25.03.2019 praying for permission to summon witnesses in rebuttal. The application was vehemently opposed by the respondents/defendants. On consideration of the stand of the respective parties, the application (Annexure P/6) for summoning witnesses in rebuttal was dismissed by the learned Addl. Civil Judge (Sr. Div.), Fatehgarh Sahib vide order dated 03.04.2019.

[4] Learned counsel for the petitioner contends that evidence of Narinder Kaushal, Stamp Vendor, District Court Fatehgarh Sahib is essential, therefore the application (Annexure P/6) for summoning the said witness in rebuttal evidence along with register regarding sale of stamp/papers dated 13.12.2005 at serial No.5718 in the name of Balbir Singh i.e. respondent/defendant No.1 ought to have been allowed.

[5] I have considered the submissions of learned counsel for the petitioner.

[6] Respondent/defendant No.1 from the very beginning denied having executed agreement to sell dated 13.12.2005. Onus of issue No.1 framed on 17.09.2009 with regard to execution of agreement to sell dated 13.12.2005 was on the petitioner/plaintiff. Therefore, it was incumbent upon the petitioner/plaintiff to have led evidence in the affirmative of respondent/defendant No.1 having executed the agreement to sell in his favour. The petitioner/plaintiff failed to lead evidence on the issue in the affirmative. The impugned order was passed by the learned Addl. Civil Judge (Sr. Div.) Fatehgarh Sahib dated 03.04.2019 dismissing the application for being allowed to lead evidence by way of rebuttal on the ground that the same if allowed would amount to filling up the lacuna does not

decision in case titled as **Rashpinder Singh vs Seema, 2018 (4) PLR 732.**

Relevant extract of the same is reproduced as under:-

“4. It is settled principle of law that the plaintiff cannot lead evidence in rebuttal in respect of an issue, the onus of which was on the plaintiff himself. Reference can be made to Surjit Singh and others v. Jagtar Singh and others, 2007 (1) RCR (Civil) P&H 537 (DB); Jagdev Singh and others v. Darshan Singh and others, 2007 (1), RCR (Civil) 794 (DB) and Avtar Singh v. Baldev Singh. Even if the plaintiff has reserved the right to lead evidence in rebuttal, the same is relatable to the issue herein as there was no such rebuttal issue in view of facts on record.”

[7] In the light of the position as noted above, no circumstances exist warranting interference with the well-reasoned order passed by the learned trial Court. Finding no merit in the revision petition, the same is dismissed in limine.

26.08.2019
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(B.S. Walia)
Judge

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