

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

CR 5591 of 2019

Date of Decision : September 09, 2019

Surinder Singh

.....Petitioner

VERSUS

Baljeet Kaur and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present : Mr. Manish K. Singla, Advocate for the petitioner.

Mr. Harshit Jain, Advocate for the respondents.

NIRMALJIT KAUR, J.

The present revision petition is filed for setting aside the order dated 30.8.2019 passed by Additional Civil Judge (Senior Division), Dhuri vide which the application of the petitioner to examine the handwriting and finger print expert in rebuttal evidence to rebut the evidence of the respondents adduced on the issue was dismissed.

While praying for setting aside of the said order, learned counsel for the petitioner submitted that the issue No.6 was framed on the objection raised by the defendants. Therefore, it was for the defendants to prove the said issue. In order to prove the said issue, the defendants examined Dr. Inderjit Singh, handwriting and finger print expert and after closing the evidence of the defendants, the case was fixed for rebuttal evidence of the petitioner and the petitioner immediately moved an application to allow him to examine handwriting and finger print expert in order to rebut the evidence led by the respondents on issue No.6. It was contended that the trial Court failed to appreciate that the onus to prove this issue was upon the respondents/defendants and, therefore, it

was the right of the petitioner to lead rebuttal evidence. Secondly, the petitioner while closing his evidence in affirmative had reserved the right to lead evidence in rebuttal.

Learned counsel for the respondents while vehemently opposing the revision relied upon the judgment rendered in the cases of **Jaswant Singh Vs. Jagroop Singh and others**, 2016(1) PLR 840 and **Ram Rattan Vs. Anand Pandit and others**, 2009(5) R.C.R.(Civil) 696 to argue that the onus was infact upon the plaintiff. Therefore, he cannot turn around and say that he wants to lead rebuttal evidence as the rebuttal evidence can be led only qua an issue where the onus is on the defendants. The trial Court too proceeded to dismiss the application of the petitioner to lead rebuttal evidence while relying upon the aforesaid two judgments.

After hearing learned counsel for the parties, the following admitted facts emerge:-

- (a) the issue “Whether the pronote and receipt dated 10.7.2016 is forged and fabricated documents and defendant Harbinder Singh (since deceased) never signed the same nor received any consideration for the plaintiff?OPD” was framed at the behest of the defendants;
- (b) the defendants took the objection in the written statement that the pronote and the receipt was fabricated;
- (c) the respondents filed their replication and denied the allegations;

- (d) the plaintiff-petitioner while leading his evidence reserved the right to lead rebuttal evidence.
- (e) the defendants on their side also led evidence to prove the said issue and examined Dr. Inderjit Singh, handwriting and finger print expert to prove that the pronote and the receipt dated 10.7.2016 was forged.

The question whether it was mandatory on the trial Court to provide an opportunity to the plaintiff to lead evidence in rebuttal only in those cases where he has reserved his right of rebuttal stands answered by the Division Bench of this Court in the case of **Avtar Singh and another Vs. Baldev Singh and others**, 2015(1) CivCC 728 as under:-

“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 (DB) and a Single Bench in **National Fertilizers Ltd. v. Municipal Committee, 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 question No.2 whether plaintiff can independently lead evidence in rebuttal over such issues, the onus of which is purely on the defendants was answered as under:-

“From a plain reading of the provisions of Order 18 Rule 3 CPC and the principle of law enunciated by the Division Bench in **Surjit Singh's case** (supra), it is axiomatic that in a case, where there are several issues, and the burden of proof some of which lies upon the defendant, plaintiff who is conscious to the lis and alive to the matter in issue, he can adduce his evidence in entirety vis-a-vis all the issues including those onus of proof of which is upon the defendant. Or having led the evidence in affirmative, as regards the issues, the onus of proof of which is upon the plaintiff himself, he can reserve his right to lead evidence in rebuttal. Needless to assert, leading evidence in rebuttal is also a part of the plaintiff's evidence. Whether he leads it in one go qua all the issues and close his evidence or reserve his right to lead rebuttal evidence.”

Applying the test in the present case, the plaintiff-petitioner has satisfied both the conditions. He has closed his evidence in affirmative and has also reserved the right to lead the evidence in rebuttal. Thus, it really does not matter in the present case whether the issue was required to be proved by the defendants or the plaintiff as long as he has reserved the right to lead the evidence in rebuttal and had closed his evidence in affirmative. Therefore, he had the right to lead rebuttal evidence.

After the Court had finished dictating the matter but before

signing, learned counsel for the respondents appeared in the Court and handed over the judgment rendered in the case of **Jagdev Singh and others Vs. Darshan Singh and others**, AIR 2007 P&H 118. Each case depends on its own facts. No doubt, examining a handwriting and finger print expert is not a matter of right but in this case the issue was framed at the behest of the defendants. The defendants in order to prove the issue produced a handwriting and finger print expert. The plaintiffs, who had already reserved the right to lead rebuttal evidence was justified in asking permission to produce the handwriting and finger print expert to counter the evidence of the defendants.

Reliance placed by learned counsel for the respondents in Jaswant Singh's case (supra) and Ram Rattan's case (supra) does not help as neither of the two cases have taken note of the judgment rendered in the case of **Raghubir Singh Vs. Pavitar Singh**, decided on 14.10.2010 passed in CR No.5793 of 2010 which was passed on an earlier point of time wherein it was held that the onus to prove the issue in respect of a pronote and receipt being forged and fabricated was on the defendant and therefore, the plaintiff cannot be denied the right to lead rebuttal evidence by holding as under:-

“Once, the trial Court has framed the issues in respect of the pronote and receipt being forged and fabricated and onus of proof was placed on the defendant, the plaintiff gets a right to lead rebuttal evidence on such issue. In the Division Bench judgment of this Court in **Surjit Singh and others vs. Jagtar Singh and other**, AIR 2007 Punjab 1, it has been held

that if plaintiff closes his evidence in affirmative such plaintiff has a right to lead evidence in rebuttal, the onus of which was on the defendant. The judgment of this Court in **Sardara Singh's case (supra)** is not helpful to the arguments raised by learned counsel for the petitioner as it could not be pointed out that there was any issue in respect of agreement in question in the aforesaid case as forged and fabricated as is the issue No. 4 in the present case, the onus of which was on the defendant. I do not find that the said judgment is of any help to the arguments raised by learned counsel for the petitioner.”

The case of the petitioner is on a better footing. Even though the onus was on defendants, he duly led the evidence as the issue being conscious of the objection having been raised. He not only led evidence but also reserved the right to lead rebuttal evidence in case the defendants also lead evidence to prove the said issue.

In view of the above discussion, the application for permission to examine the handwriting and finger print expert in his rebuttal stands allowed. The trial Court is directed to permit the petitioner to examine the handwriting and finger print expert in his rebuttal evidence upon issue No.6. Thereafter, the trial Court shall proceed to decide the suit in accordance with law.

The instant revision petition is, accordingly, allowed as above.

(NIRMALJIT KAUR)
JUDGE

September 09, 2019
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No