

106+231

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

**CM No.2037-CII of 2019 in/and
CR No.544 of 2015
Date of Decision: 30.01.2019**

**NACHHATAR SINGH THROUGH HIS LRS. AVTAR SINGH
AND ORS.Petitioners**

Vs

**M/S KUNDAN LAL DHARAM PAL & ORS
....Respondents**

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

Present:Mr. Kulbhushan Raheja, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

CM No.2037-CII of 2019

For the reasons mentioned in the application, the same is allowed. Copy of written statement filed before the trial Court on behalf of Pushpa Rani and Sanjeev Kumar legal representatives of Dharam Pal is taken on record.

Main case

[1]. In compliance of the order dated 18.01.2019 passed by this Court, a photocopy of receipt regarding payment of costs of Rs.5000/- in the High Court Lawyers Welfare Fund has been placed on record. The same is taken on record.

[2]. This revision petition has been preferred against the order dated 17.12.2014 passed by the Addl. Civil Judge (Sr. Divn.) Sangrur vide which application of the petitioners for producing the Fingerprint and Handwriting Expert as additional evidence was dismissed.

[3]. Learned counsel for the petitioners also placed on record certified copy of written statement filed on behalf of defendant No.3 to contend that the stand taken by him in the written statement was evasive.

[4]. Learned counsel for the petitioner by referring to **Rajesh Kumar vs. Mangat Rai and others, 2011(17) R.C.R. (Civil) 565** and **Ram Gopal and others vs. Hira and others, 1985 PLJ 541** contended that the additional evidence can be allowed under inherent power of the Court to do substantial justice.

[5]. I have considered the submissions made by learned counsel for the petitioners.

[6]. Perusal of para no.3 of the written statement of defendant No.3 on merits would show that para no.3 of the plaint was denied not evasively, but conclusively. In view of stand taken by the defendants, it was obligatory on the part of the plaintiffs/petitioners to lead evidence in affirmative in view of denial of signature of defendant No.3 on receipts produced by

the plaintiffs issued by defendant No.1, which were signed by defendant No.3. Plaintiffs have produced number of receipts which are claimed to have been signed by defendant No.3 in the presence of the plaintiffs. Despite denial made by the defendants in the written statement, plaintiff did not venture to lead any evidence in affirmative in the form of expert evidence to compare the signatures. Plaintiffs were required to prove their case by leading affirmative evidence by examining the Handwriting and Fingerprint Expert.

[7]. Such a prayer in respect of an issue, onus of which was on the plaintiffs themselves cannot be allowed in rebuttal evidence in view of **Surjit Singh and others vs. Jagtar Singh and others, 2007 (1) RCR (Civil) 537 DB; Jagdev Singh and others vs. Darshan Singh and others, 2007 (1) RCR (Civil) 794** and **Avtar Singh vs. Baldev Singh, 2015 (1) PLR 230.**

[8]. In order to avoid such a legal obligation. the plaintiffs have coined their prayer to project a case of additional evidence.

[9]. There cannot be any dispute with regard to the precedents cited by learned counsel for the petitioners, but facts of each case has to be appreciated. The nature of prayer is for leading Expert evidence at the stage of rebuttal evidence (though the prayer is made for leading additional evidence). In a

way the plaintiffs seek to adduce rebuttal evidence under the garb of additional evidence in order to circumvent rigor of aforesaid precedents. In the cited case, no such proposition was involved as the nature of evidence was not the Expert evidence.

[10]. In **Ram Kumar vs. Raj Kumar and others, 2014(3) CivCC 453**, it was held that examination of Handwriting and Fingerprint Expert cannot be allowed to be examined in the rebuttal and even such type of prayer cannot be allowed by way of additional evidence as this was well within the knowledge of the plaintiffs at the time of leading their evidence in affirmative. Such a course would amount to filling of lacuna under the garb of additional evidence by changing the heading of the relief.

[11]. The party cannot be allowed to fill lacuna by adducing evidence in rebuttal under the garb of additional evidence without satisfying the Court that the parameters on which the same evidence could not be led. Having failed to lead evidence in affirmative, the plaintiffs cannot resort to the application under Order 18 Rule 17-A CPC.

[12] In **M/s Shree Sangmeshwar Mahadev Gramo Udyog Mandal vs. Ajmer Singh and another, 2014(4) Law Herald 3627**, it was held that the additional evidence cannot be allowed, when the evidence was within the knowledge of the plaintiff at the time of leading evidence in affirmative. Written

statement produced on record are suggestive of the fact that the plaintiffs were in the knowledge of the stand taken by the defendants in their written statement and despite that they did not opt to lead evidence in affirmative.

[13] In view of above, the discretion exercised by the trial Court cannot be faulted with in view of facts and circumstances of the present case. There is no error of jurisdiction in the impugned order passed by the trial Court. This revision petition is accordingly dismissed.

January 30, 2019	(RAJ MOHAN SINGH)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No