

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

CR-5466-2016

Decided on : 06.01.2020

Hardial Singh

... Petitioner(s)

Versus

Davinder Singh

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Rajinder Sharma, Advocate
for the petitioner(s).

Mr. G.S. Nagra, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J.

The instant revision petition has been preferred against the order dated 02.08.2016, passed by the Addl. Civil Judge, Sr. Divn., Ajnala (hereinafter referred to as 'the Ld. Court below'), vide which the application of the plaintiff (respondent herein) was allowed whereby he had sought permission to get photographs of the specimen signatures of the petitioner-Hardial Singh, which are the disputed signatures and already on file.

It has been contended that the impugned order was contrary to the provisions of Order 18 Rule 3 CPC as opportunity to the respondent/plaintiff to lead evidence in rebuttal could be granted only *qua* those issues where the burden of proof lay upon the defendants and where the plaintiff had reserved his right of rebuttal in the absence of which his right of leading evidence in rebuttal would stand extinguished his right. It was further urged that the respondent/plaintiff after adducing his entire evidence, had closed his evidence on 08.05.2015 and thereafter, even the petitioner/defendant had led their evidence. In support, he placed reliance

on *Avtar Singh and another vs. Baldev Singh and others*, 2015(1) Civil Court Cases 728, *Gulshan Ahuja Vs. Shiv Shakti International*, 2019(1) Law Herald 753, *Radha Devi Vs. Ram Gopal (since deceased) through his LRs and others*, 2019(2) Civil Court Cases 297 and CR No. 1570 of 2016 (O&M), titled as, “*Gurnam Kaur and Ors. Vs. Bal Tirath Singh*”, decided on **01.11.2019**.

Per contra, the respondent/plaintiff contended that the petitioner/defendant had himself alleged in his written statement that the agreement to sell dated 04th November, 2011 was a result of fraud and impersonation. Further, it was also urged that a specific issue i.e. issue No.9 had been framed as to whether the alleged agreement to sell was a result of fraud and impersonation and hence the onus to prove this issue lay upon the petitioner/defendant. While discharging the onus on issue No. 9, the petitioner/defendant had examined the handwriting and fingerprint expert as DW2, who had given a report in favour of the petitioner/defendant. It was in this background that the respondent/plaintiff chose to rebut the evidence of the petitioner/defendant by examining the handwriting and fingerprint expert in rebuttal. He could not have pre-supposed and led his evidence at an earlier stage in anticipation of the evidence, which could have been led by the petitioner/defendant later on. Counsel for the respondent/plaintiff in support of his contention has placed reliance upon the judgment of this Court rendered in *Pawan Kumar Vs. Surinder Pal and Anr.*, 2009(3) Civil Court Cases 380 and *Wazirpur Small Industries Association (Regd.) Vs. Union of India and Ors.*, 2010(22) R.C.R. (Civil) 188.

Heard.

The onus of proving issue No.9 was on the petitioner/defendant, but the respondent/plaintiff did not reserve his right on leading evidence in rebuttal on the said issue and in fact closed his evidence without reserving such a right. A Division Bench of this Court in ***Avtar Singh's case*** (*supra*) has observed as under:-

“Question No.1 i.e. whether it is mandatory for the trial to provide an opportunity to the plaintiff to lead evidence in rebuttal only in those cases where he had reserved his right of rebuttal?”

6. 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.

Question No.2 i.e. whether plaintiff can independently lead evidence in rebuttal over such issues, the onus of which is purely on the defendant?

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.

Question No.3 i.e. whether Rule 3 of Order 18 of the Code if read in conjunction with Order 18 Rule 1 of the Code widens the scope of evidence in rebuttal?

On a due and thoughtful consideration, we are of the view that the provision, which perhaps intended to be referred to by the learned Single Judge was Order 18 Rule 2 and not Order 18 Rule 1. As Order 18 Rule 1, only defines as to which of the parties has a right to begin first. Be that as it may. Provisions of Order 18 Rule 2 and Order 18 Rule 3 CPC are mutually

exclusive and have their independent domains, and thus, operate in different situations. We deem it necessary to refer to the provision of Order 18 Rule 2 CPC, which reads as thus:

“2. Statement and production of evidence — (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case”.

Keeping in view the facts and circumstances of the case and the position explained hereinabove, I am afraid since there is a Division Bench judgment of this Court, which is contrary to the judgments relied upon by the respondent/plaintiff and also by the Ld. Court below, the instant revision petition has to be allowed.

Consequently, the order impugned herein is set aside. The revision petition is accordingly allowed.

**(MANJARI NEHRU KAUL)
JUDGE**

January 06, 2020

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No