

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

CR-883-2021 (O&M)

Date of decision: 09.11.2021

Darshan Devi

....Petitioner

Versus

Krishan and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Rahul Deswal, Advocate for the petitioner
Mr.Ajay Ghangas, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

The plaintiff in a suit for recovery of Rs.57,63,130.04 is the petitioner herein.

Learned trial court, on appreciation of the pleadings, has framed the following issues:-

- “1. Whether the plaintiff Bank is entitled to decree for recovery of Rs.57,63,130.04/- along with interest on the grounds as mentioned in the plaint? OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD.
4. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD
5. Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties to file the present suit? OPD.
6. Relief.”

After the defendants had closed their evidence, the plaintiff filed an application for permission, to allow her, to examine the

a handwriting and finger print expert. The trial court has dismissed the application on 24.03.2021 with the following observations:-

4. By way of the instant application, the plaintiff has sought permission for allowing the expert to inspect the case file, to take photographs of documents and to take handwriting of defendants in court, for comparison with the disputed handwriting and to submit the report. Although the application is vague but the frame of the application shows that the applicant wants to examine handwriting expert in her rebuttal evidence. It may be observed here that when plaintiff had filed the suit, she had nowhere mentioned about the entries made in the ledger maintained by her during the day to day business. However, when she led evidence, she proved certain pages of ledger on which the defendants had denied their signatures and handwriting. At that stage when the plaintiff was leading affirmative evidence, the defendants had already denied the handwriting and signatures on the entries of ledger but the plaintiff had not taken pain to get the disputed handwriting and signatures of defendants compared with their admitted handwriting on the pages of ledger. This was the evidence of affirmative which the plaintiff intends to produce in rebuttal. Perusal of the issues framed in the case also shows that there is no such issue, in rebuttal of which the plaintiff may examine the handwriting expert during her rebuttal evidence. She may have moved an application for additional evidence but the instant application is not maintainable at all.

5. Moreover, the original ledger was not produced on the case file and it was on the asking of the Court that the plaintiff had produced some ledger for perusal of the Court on last date of hearing. In the evidence of plaintiff, it has nowhere come that the original ledger was produced during recording of evidence and it was seen and returned and photocopies were therefore exhibited. Thus, the photocopies of the pages of ledger appear to have been exhibited without production of original record. The disputed signatures and handwriting from the photostat copies of documents cannot be allowed to be compared with the admitted handwriting and signatures. In such circumstances, the instant application is devoid of any merit and is hereby dismissed.”

On 08.11.2021, when the case came up for hearing, learned counsel representing the petitioner was requested to produce the issues framed, which have been produced by the learned counsel. From a bare perusal of the issues framed, it is evident that the onus to prove issue no.1 was on the plaintiff whereas onus to prove issue no.2 to 5 was on the defendants.

By now it is well settled that the plaintiff can be permitted to lead evidence at the rebuttal stage only with respect to the issue, onus whereof, is on the defendants. Reliance in this regard can be placed on the judgment in **Surjit Singh and others vs. Jagtar Singh and others'** 2007 (1) RCR (Civil) 537 and '**Jagdev Singh and others vs. Darshan Singh and others'** 2007 (1) RCR (Civil) 794.

Learned counsel representing the petitioner has failed to establish that the evidence she seeks to lead at the stage of rebuttal is with respect to issue no. 2 to 5.

Keeping in view the aforesaid facts, no ground to interfere is made out.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

09.11.2021

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE