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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.3890 of 2017 (O&M)

Date of decision: 14.10.2022

M/s Aspire Human Capital Management Private Limited

..... Petitioner

versus

M/s Rayat Education and Research Trust and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Rohit Khanna, Advocate with
Mr. Rohit Chandel, Advocate
for the petitioner.

Mr. Ankush Aggarwal, Advocate with
Mr. Nitin Jain, Advocate
for respondents No.1 and 3.

TRIBHUVAN DAHIYA J.

1. This revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 03.04.2017 (Annexure P-1), whereby petitioner-plaintiff's application to examine Ashu Gulati in rebuttal evidence was dismissed; and order dated 25.04.2017 (Annexure P-2), whereby petitioner-plaintiff's application filed under Section 151 CPC for leading additional evidence was also dismissed by the trial Court.

2. The facts in brief are, the petitioner-plaintiff (hereinafter referred to as 'the plaintiff') had filed a civil suit *inter alia* seeking recovery of Rs.6,72,840/- against the respondents-defendants (hereinafter referred to as 'the defendants'). On completion of pleadings, issues were framed and the petitioner-plaintiff examined Ashu Gulati as PW-1 and Amit Bhatia as

PW-2 in its evidence. The defendants examined Sandeep Singh Kaura as DW-1 in its defence. Thereafter, the case was listed for rebuttal evidence. At that stage, the petitioner-plaintiff filed an application (Annexure P-4) to lead evidence of Ashu Gulati (PW-1) in its rebuttal evidence for the limited purpose of complying with provisions of Sections 65-B of the Evidence Act, 1972. It was pleaded in the application that plaintiff has substantially complied with the provisions of Section 65-B of the Act and has proved the e-mails. However, by way of abundant precaution and to avoid any technical objection by the respondents-defendants during arguments, the plaintiff wants to file a detailed affidavit in compliance of the provisions of Section 65-B of the Act. The said application was dismissed by the trial Court, vide impugned order dated 03.04.2017 (Annexure P-1), by observing that the scope of leading rebuttal evidence was very limited as plaintiff could lead rebuttal evidence only on those issues onus to prove the same on the defendants. It has further been held that as per the settled law, evidence which was to be brought on record in the affirmative cannot be led at rebuttal stage. To prove the e-mails, plaintiff cannot be allowed to place on record affidavit of Ashu Gulati (PW-1), as such e-mails were required to be proved by the plaintiff in his affirmative evidence.

3. Faced with the situation, the petitioner-plaintiff filed another application (Annexure P-5) for leading additional evidence of Ashu Gulati (PW-1) for the limited purpose of further compliance of Section 65-B of the Evidence Act. This application was also dismissed by the trial Court, vide order dated 25.04.2017 (Annexure P-2), by observing that additional evidence can only be taken when it is established on record that the party seeking to lead such evidence could not do so earlier despite due diligence. However, no such pleading was there in the application that despite due

diligence, the plaintiff was prevented from leading the evidence earlier. It was further observed that the earlier application for the same purpose filed by the plaintiff to lead evidence in rebuttal already stood declined, and filing of the application for leading additional evidence only amounts to seeking a review of the earlier order dated 03.04.2017 (Annexure P-1), whereby the application to lead the same evidence of Ashu Gulati in rebuttal was declined.

4. Learned counsel for the petitioner-plaintiff has argued that the impugned orders are liable to be set aside as the additional evidence is being sought to be led only by way of abundant caution, to ensure compliance of Section 65-B of the Evidence Act, which was required for proper adjudication of the matter by the trial Court. In support of the submission, he has placed reliance upon a judgment of this Court passed in *Gurbaj Singh vs. Shameer Singh and others, 2016 (SCC) online P&H 13912*, to state that additional evidence can be permitted in any eventuality after closing of the evidence by the defendants and at the stage of rebuttal evidence also, by exercising the powers under Section 151 of CPC, if the evidence is essential for just decision of the case.

5. *Per contra*, learned counsel for the respondents-defendants, by referring to law laid down by the Division Bench of this Court in *Surjit Singh and others vs. Jagtar Singh and others, 2007 (1) RCR (Civil) 537*, has argued that plaintiff has no right to lead evidence in rebuttal, on issues for which onus to prove is on it.

6. The afore-mentioned facts make it apparent, it is petitioner-plaintiff's pleaded case is that additional evidence is to be led only by way of abundant caution for the limited purpose of ensuring further compliance with the provisions of Section 65-B of the Evidence Act, though the

substantial compliance of the provision has already been established on record through its witnesses. It is only to avoid any technical objection by the respondents-defendants during final arguments, that the petitioner wants to file a detailed affidavit. It is also a matter of record that the petitioner, at the first instance, filed an application to examine Ashu Gulati (PW-1) in rebuttal evidence, which was declined by the trial Court, vide impugned order dated 03.04.2017 (Annexure P-1), in view of the settled legal position that the plaintiff cannot be permitted to lead evidence in rebuttal on the issues the onus of proof is on it. Without challenging the said order, the petitioner-plaintiff filed another application under Section 151 CPC seeking leave to lead additional evidence of the same witness Ashu Gulati (PW-1) for the same purpose of ensuring further compliance of Section 65-B of the Act. This application was also dismissed by the trial Court by order dated 25.04.2017 (Annexure P-2). It was declined on the ground the plaintiff failed to prove that despite due diligence and on account of circumstances beyond its control, the evidence could not be adduced earlier. It is only after rejection of this application for adducing additional evidence, the petitioner came to this Court by filing the instant revision petition, impugning both the orders Annexures P-1 and P-2. Therefore apparently, the petitioner's conduct in pursuing remedies before the Courts leaves much to be desired. Filing of the application for additional evidence, after dismissal of the earlier application for leading the same evidence in rebuttal, points to an attempt to over reach the Court. Besides, allowing such an application for additional evidence would nullify the law laid down by this Court in *Surjit Singh* case (*supra*) that under Order XVIII Rule 3 CPC a party cannot be permitted to lead evidence in rebuttal on issues the onus of proof is on that party, since the application, in effect, is only to

overcome the failed attempt to lead evidence in rebuttal. Therefore, such a plea cannot be entertained.

7. There is another aspect of the matter, not only the petitioner-plaintiff has failed to establish why the additional evidence could not be led in the affirmative despite due diligence, it's pleaded case is, the additional evidence sought to be led now is only by way of abundant caution, to show further compliance of the provisions of Section 65-B of the Evidence Act. Allowing such an application only amounts to giving the petitioner a premium on his lackadaisical attitude, as he was required to lead this evidence in the affirmative only. Secondly, there is no provision in law which permits a party to lead additional evidence by way of abundant caution, only to avoid an imagined technical objection by the other side during arguments; nor the inherent powers of Court under Section 151 CPC can be invoked to satisfy such assumption or apprehension of a party. Thirdly, such additional evidence is not essential for just adjudication of the suit in question, especially since the petitioner-plaintiff has itself pleaded that substantial compliance of Section 65-B of the Evidence Act has already been established on record by the evidence led.

8. The judgment of this Court passed in *Gurbaj Singh* case (*supra*) has no application of the facts of this case. In it powers under Section 151 CPC were invoked to allow additional evidence at the stage of rebuttal evidence, since the evidence sought to be adduced was considered essential for just decision of the case. In the instant case, the evidence sought to be adduced is only by way of abundant caution.

9. Therefore, there is no ground to allow the petitioner, either to lead evidence in rebuttal by examining Ashu Gulati (PW-1) or to lead additional evidence of this witness. There is no infirmity or illegality in

the impugned orders.

10. Dismissed.

11. The opinion expressed hereinabove is only for the purpose of deciding the instant petition, and shall not be considered as an expression of opinion on merits of the issues involved in the suit.

(TRIBHUVAN DAHIYA)
JUDGE

14.10.2022
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No