

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

**CR-5112-2017 (O&M)
Date of decision : 26.08.2022**

Darshan Singh

... Petitioner(s)

Versus

Ved Parkash and Others

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

Mr. Jai Bhagwan, Advocate for the respondents.

ALKA SARIN, J. (ORAL)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 19.07.2017 passed on an application for granting permission to lead rebuttal evidence moved by the plaintiff-petitioner.

The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for recovery of Rs.88,00,000/- by way of specific performance on the basis of an agreement to sell dated 21.03.2010 (Ex.P-2) along with interest *pendente lite* and future interest. The issues were framed on 11.08.2016 and the plaintiff-petitioner led his affirmative evidence. Thereafter, the defendant-respondents also led their evidence. After the conclusion of the evidence and cross-examination of the defendant-respondents, an application was filed by the plaintiff-petitioner to examine a handwriting expert in rebuttal evidence with respect to the disputed

signatures and the writing on the agreement to sell dated 21.03.2010. It was stated in the application that since the signatures on the said agreement to sell had been denied by the defendant-respondents in their cross-examination, hence, it was necessary to examine a handwriting expert in rebuttal evidence. The application was contested by the defendant-respondents. Vide the impugned order dated 19.07.2017 the application was dismissed on the ground that the plaintiff-petitioner could not lead evidence in rebuttal on an issue qua which the onus was on the plaintiff-petitioner himself. Aggrieved by the said order, the present revision petition has been filed.

Learned counsel for the plaintiff-petitioner would contend that since the signatures had been denied by the defendant-respondents in their cross-examination for the first time, hence, the necessity of examining a handwriting expert in rebuttal arose. It is further the contention that in the written statement it was never stated by the defendant-respondents that the agreement to sell was forged and fabricated.

Per contra, learned counsel for the defendant-respondents has relied upon the Division Bench judgment of this Court in the case of **Surjit Singh & Ors. Vs. Jagtar Singh & Ors. [2007 (1) RCR (Civil) 537]** to contend that rebuttal evidence can only be led qua an issue the onus of which was on the defendant and that too if the right to lead rebuttal is reserved at the time of closing evidence by the plaintiff. Further, reliance has been placed upon the Division Bench judgment of this Court in the case of **Avtar Singh & Anr. Vs. Baldev Singh & Ors. [2015 (5) RCR (Civil) 625]**.

Heard.

In the present case, on the basis of pleadings of the parties, on 11.08.2016 the following issues were framed :

1. Whether the plaintiff is entitled to the recovery of Rs.88,00,000/- along with interest as prayed for ?
OPP
2. Whether the suit is beyond limitation ?
3. Whether the plaintiff has no cause of action and locus standi to file the present suit ? OPD
4. Relief.

Issue No.1 has been framed specifically to the effect whether the plaintiff-petitioner was entitled to the recovery of Rs.88,00,000/- along with interest as prayed for. The onus of the said issue is on the plaintiff-petitioner. The entire case of the plaintiff-petitioner for recovery is based on an agreement dated 21.03.2010 and hence evidence was required to be led in the affirmative to prove the said agreement. The plaintiff-petitioner cannot now be permitted to examine a handwriting expert in rebuttal qua the said agreement the onus of proving which was on the plaintiff-petitioner himself.

The Division Bench of this Court in the case of **Surjit Singh** (*supra*) has held as under :

“15. In our opinion, Order 18 Rule 3 of the Civil Procedure Code would not give a right to the plaintiff to lead evidence in rebuttal on issues in which the onus of proof is on the plaintiff. Accepting such an

interpretation would be to ignore a vital part of Order 18 Rule 3 of the Civil Procedure Code. The rule clearly postulates that “the party beginning, may, at his option, either produce his evidence on these issues or reserve it by way of answer to the evidence produced by the other parties”. No matter, how liberally a provision in the statute is required to be interpreted, by interpretation it cannot be amended. Whilst construing a statutory provision the Court cannot reconstruct it. The rule consciously provides the parties with an option either to produce the evidence in support of the issues or to reserve it by making a statement to that effect. The statement itself may well be liberally construed to avoid any unnecessary technical obstacles. One such example has been given by the Division Bench in the case of Smt. Jaswant Kaur (supra). It has been held that if a statement is made by the Advocate for the plaintiff that “the plaintiff closes its evidence in the affirmative only,” the same would be read to mean that the plaintiff had reserved its right to lead evidence in rebuttal. We are, therefore, unable to agree with the observations made by the learned Single Judge in the case of Kashmir Kaur (supra) that he is entitled to lead evidence in rebuttal as a matter of right. In our opinion, this observation runs

contrary to the observations of the Division Bench in Jaswant Kaur's case (supra). The Division Bench has even fixed the maximum time on which the plaintiff has to exercise his option to reserve the right to lead evidence in rebuttal. It has been clearly held that such a reservation has to be made at the time of the close of the evidence of the plaintiff. We are also unable to agree with the observations of the learned Single Judge in the case of M/s Punjab Steel Corporation (supra). In that case the plaintiff sought to lead evidence in rebuttal, after the close of the evidence of the defence. At that stage, the plaintiff cannot be permitted to reserve the right to lead evidence in rebuttal. The observations of the learned Single Judge run contrary to the law laid down by the Division Bench in the case of Smt. Jaswant Kaur (supra). No doubt, the Division Bench clearly lays down that an overly strict view cannot be taken about the modality of reserving the right of rebuttal. But at the same time, it has been held that the last stage for exercising option to reserve the right of rebuttal can well be before the other party begins its evidence. We are in respectful agreement with the aforesaid observations of the Division Bench in the case of Jaswant Kaur (supra) and R.N. Mittal, J. in National

Fertilizers Ltd. (supra). ”

This has also been reiterated in the judgment by the Division Bench of this Court in the case of **Avtar Singh** (*supra*) wherein it was *inter alia* held that :

“Provisions of Order 18 Rule 2(3) cannot be construed or constructed to mean that after defendant had rendered his response to the whole case, plaintiff could still have a right to lead evidence in rebuttal. Such an interpretation or construction of the provision would be distorting the provision beyond its content. This perception and understanding further finds complete resonance in the provision of Order 18 Rule 3 CPC, as only the said provision deals with a situation where there are several issues and the burden of proof some of which lies upon the defendant.”

In view of the law laid down by the Division Bench of this Court, I do not find any illegality or infirmity in the impugned order passed by the Trial Court. Accordingly, the present revision petition is dismissed. Pending applications, if any, also stand disposed off.

26.08.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO