

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.6524 of 2017 (O&M)

Date of Decision : 10.05.2022

Rulda Singh

....Petitioner

VERSUS

Paramjit Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Puja Chopra, Advocate for the petitioner.

Mr. Naresh Prabhakar, Advocate for the respondent.

ALKA SARIN, J.

The challenge in the present revision petition is to the order dated 23.08.2017 (Annexure P-1) passed by the Trial Court dismissing the application of the defendant-petitioner for taking off the file the evidence tendered in rebuttal by the plaintiff-respondent.

The facts in brief, as available from the paper-book and copies of the *zimni* orders supplied by counsel, are that in March 2011 the plaintiff-respondent filed a suit *inter-alia* for possession by way of specific performance of agreement to sell dated 23.05.2005 or in the alternative for recovery of damages along with interest. The defendant-petitioner filed a written statement denying the execution of the agreement to sell and pleaded that it was a forged and fabricated document. On 11.04.2014 the Trial Court framed the following issues :

1. Whether the plaintiff is entitled to possession by way of specific performance as prayed for ? OPP

2. Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP
3. Whether the suit of the plaintiff is not maintainable? OPD
4. Whether the plaintiff has not come to the Court with clean hands ? OPD
5. Whether the plaintiff has no cause of action to file the present suit ? OPD
6. Whether the agreement to sell dated 23.05.2005 is forged and fabricated document ? OPD
7. Relief.

Vide order dated 28.07.2016 the Trial Court closed the evidence of the plaintiff-respondent except the cross-examination of PW1. The order dated 28.07.2016 reads as under :

“PW-1 Paramjit Singh is present and partly cross-examined. His further cross-examination is deferred on request of witness as he is not feeling well. Now case stands adjourned to 10.08.2016 for further cross-examination of PW-1. Remaining plaintiff evidence is closed by order except cross-examination of PW-1. It is further made clear that only one last opportunity is granted to both the parties to conclude the cross-examination of this witness.”

The cross-examination of PW1 was completed on 10.08.2016 and the suit was adjourned for the evidence of the defendant-petitioner. The evidence of the defendant-petitioner was closed on 17.11.2016 and the suit

was fixed for 23.11.2016 for rebuttal evidence if any. On 25.01.2017, PW3 Gurmeet Kaur (Handwriting and Finger Print Expert) was examined in chief in rebuttal evidence. On 15.03.2017, when the suit was fixed for cross-examination of PW3, the counsel for the defendant-petitioner objected that she could not be examined in rebuttal evidence without prior permission of the Trial Court. On 02.05.2017 the counsel for the defendant-petitioner moved an application (Annexure P-2) for taking off the file the evidence tendered in rebuttal by the plaintiff-respondent and for closing his evidence by order. The plaintiff-respondent filed a reply (Annexure P-3) and contested the said application. Vide impugned order dated 23.08.2017 (Annexure P-1) the Trial Court dismissed the said application. Hence, the present civil revision petition under Article 227 of the Constitution of India.

Learned counsel for the defendant-petitioner would contend that the impugned order passed by the Trial Court is patently illegal and against the provisions of CPC. According to her, the plaintiff-respondent did not reserve his right to lead evidence in rebuttal at the time when his evidence was closed by order and, as such, he could produce rebuttal evidence as a matter of right. Reliance was placed upon Division Bench decisions in **Surjit Singh & Ors. vs. Jagtar Singh & Ors. [2007 (1) RCR (Civil) 537]** and **Avtar Singh & Anr. vs. Baldev Singh & Ors. [2015 (5) RCR (Civil) 625]**. She further submitted that the defendant-petitioner had taken a specific plea in his written statement that the agreement to sell was a forged and fabricated document and an issue in this regard was also framed. However, while leading his evidence the plaintiff-respondent did not produce any handwriting expert. It was after the defendant-petitioner had produced a handwriting expert and his evidence was closed by order that the

plaintiff-respondent filed the affidavit of PW3 as examination-in-chief in rebuttal which was against the settled provisions of law.

Per contra, learned counsel for the plaintiff-respondent argued that the application (Annexure P-2) was filed only to delay the proceedings and that the suit had been pending since 2011. Learned counsel for the plaintiff-respondent submitted that the plaintiff-respondent has already led evidence in affirmative to prove the execution of the agreement to sell and since the defendant-petitioner has led expert evidence in the context of agreement being forged and fabricated, therefore, in order to counter the expert opinion the plaintiff-respondent is entitled to lead the evidence in rebuttal in respect of the evidence which has been led by the defendant-petitioner in the context of issue no.6.

I have heard learned counsel for the parties.

In view of specific denial by the defendant-petitioner in the written statement in the context of execution of agreement to sell dated 23.05.2005, it was the obligation of the plaintiff-respondent to rebut this plea of the agreement to sell being forged and fabricated. The plaintiff-respondent did not reserve any right to lead rebuttal evidence when his evidence was closed. The Trial Court while passing the impugned order held that *“A specific issue in this regard was framed while framing the issues vide order dated 11.04.2014 in the shape of issue no.6 which is as follows :*

6. Whether the agreement to sell dated 23.05.2005 is forged and fabricated document ?

The onus of the said issue was placed upon defendant. To discharge this onus, defendant himself stepped into the witness-box as DW1 and got examined DW2 Varun Gagneja, Handwriting and Fingerprints Expert. Now,

in rebuttal, plaintiff has the right to lead evidence in respect of the issue, the onus of which lies upon the defendant. Thus, the plaintiff has the right to rebut the evidence led by the expert witness of the defendant on issue no.6 by examining his own expert in rebuttal evidence”.

The reasoning given by the Trial Court is perverse. A plaintiff cannot lead evidence in rebuttal as a matter of right on an issue the onus of which is on a defendant. A plaintiff has to reserve the right to lead evidence in rebuttal on such an issue the onus of which is on the defendant. In the present case the plaintiff-respondent did not reserve this right when his evidence was closed by order. The onus of proving issue no.6 is on the defendant-petitioner and at the time when his (plaintiff-respondent) evidence was closed, the plaintiff-respondent could have reserved his right to lead rebuttal evidence on this issue but he did not. Even under Order XVIII Rule 2(3) CPC a plaintiff cannot lead evidence in rebuttal on the entire case after the defendant had completed his evidence. In Surjit Singh’s case (*supra*) it was inter-alia held that :

“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).”

In Avtar Singh’s case (supra) 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.”

The ratio of the decisions by the Division Bench in the cases of Surjit Singh (*supra*) and Avtar Singh (*supra*) are fully applicable to the present case.

In view of the above, this Court finds that the impugned order suffers from perversity, it is against the provisions of Order XVIII CPC and the law settled by this Court and cannot be sustained. Resultantly, the present revision petition is allowed, the impugned order dated 23.08.2017 (Annexure P-1) is set aside and the application (Annexure P-2) filed by the defendant-petitioner stands allowed. Pending applications, if any, also stand disposed off.

10th May, 2022
jk

(ALKA SARIN)
JUDGE

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