

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

CR-1497-2022 (O&M)

Date of decision: 22.11.2022

M/s R.B.Tractors, Station Road Shikohabad and another

....Petitioners

Versus

M/s Mahindra and Mahindra Ltd.

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Akshay Jindal, Advocate for the petitioners

Mr. R.D.Bawa,

Mr. Samuel Gill and

Mr. Dipanshu Kapur, Advocates for the respondent

ANIL KSHETARPAL, J (Oral)

1. The defendants in the plaintiff's suit for recovery of Rs.1,71,15,000/- are the petitioners herein. The trial court, on appreciation of the pleadings, culled out the following issues for adjudication:-

“1. Whether the plaintiff is entitled to recovery of Rs.1,71,15,000/- from the defendants with interest, if so, at what rate? OPP.

2. Whether the present suit is not filed by the plaintiff through authorized person? OPD.

3. Whether M/s Punjab Tractors Limited was amalgamated with the plaintiff company and the plaintiff has taken over all assets and liabilities of M/s Punjab Tractors Limited? OPP.

4. Whether the defendants were appointed as dealer by M/s Punjab Tractors Limited for sale of its tractors? OPP.

5. Whether the suit of the plaintiff is maintainable? OPP.

6. Whether this Court has no jurisdiction to entertain and try the present suit? OPD.

7. Relief.”

2. After the plaintiff had concluded its affirmative evidence, the defendants led their evidence. Thereafter, the case was adjourned for the rebuttal evidence. The plaintiff wanted to examine the handwriting and fingerprint expert in the rebuttal evidence, which was rejected by the court on 21.01.2022. The case was then adjourned. The plaintiff wanted to examine Sh.Nitin Verma, in the rebuttal evidence. The defendants objected to the same. The suit was adjourned for consideration. The trial court has allowed the plaintiff's request while making the following observations:-

“5. Onus to prove in civil suit is not static and remains on shifting. The circumstances of this case are quite peculiar. Though defendant had given details of payments but plaintiff could not specifically explain each and every payment in his replication because of lack of certain details. The defendants have now come up with a case that certain payments were made from the account of some other firm namely Laxmi Tractors. Thus, the plaintiff is entitled to show that these payments have been credited to the accounts of Laxmi Tractors. A party cannot claim credit of one payment in two accounts. In view of all these facts the plaintiff is entitled to lead rebuttal evidence to show that these payments were credited to the account of Laxmi Tractors. Thus the plea of the plaintiff in this regard is accepted and plaintiff is allowed to examine his witness to prove these facts. Now to come up for rebuttal evidence of plaintiff on 26.04.2022. It is made clear that only two effective opportunities will be granted to the plaintiff to lead evidence in rebuttal.”

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook. The scope of rebuttal evidence has been interpreted by the two Division Benches of

this Court 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. It has been held that the scope of rebuttal evidence is restricted to the evidence to be led by the plaintiff, with respect to the issue, onus whereof to prove otherwise was on the defendant. On a careful perusal of the issues culled out by the trial court, it is evident that the plaintiff is entitled to lead evidence in rebuttal only with respect to issues no.2 and 6.

4. Learned counsel representing the respondent fairly admits that the evidence of Sh.Nitin Verma would not fall within the scope of issues no.2 and 6. However, he submits that there are certain facts, which are required to be clarified and he wishes to file an application for additional evidence because the defendants while leading evidence had stated certain facts, which were not the part of their written statement.

5. Keeping in view the aforesaid facts, the revision petition is allowed. The impugned order dated 30.03.2022 is set aside. However, if the plaintiff files an application for permission to lead additional evidence, the same shall be decided independently, without being influenced by this order.

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

22.11.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE