

202 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-681-2012

Date of Decision :25.01.2023

Rakesh Bansal

...Petitioner

versus

Karam Chand &anr.

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. YagsimantAttri, Advocate for the petitioner.  
Mr. Govind Goel, Advocate for the respondents.

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B.S. Walia, J. (Oral)

[1] Challenge in the petition is to order, Annexure P/8 dated 03.01.2012 passed by the learned Additional Civil Judge (Sr. Div.) Guhla rejecting application, Annexure P/6 dated 30.11.2011 filed by the petitioner for calling upon respondent No.1 to get his specimen voice recorded for comparing the same with the tape recorded version.

[2] Brief facts of the case leading to the filing of the instant petition are that the petitioner/plaintiff filed an application, Annexure P/6 for directions to respondent No.1 to get his voice recorded in view of alleged existence of tape recorded version between respondent/defendant No.1 and one Suresh Jindal, s/o Shri Ram Gopal, r/o Cheeka which had been placed on the record in criminal case titled as State vs. Karam Chand etc. and of said tape recorded version having been put to the respondent / defendant No. 1 Karam Chand in his cross-examination, which was refused to be identified by him as being in his voice.

[3] Learned counsel for the petitioner contends that the voice

sample of respondent/defendant No.1 is essential and was not evidence in

affirmative but evidence to rebut evidence led by the respondent with regard to alleged agreement to sell dated 02.05.2003, the onus of which was on the respondents /defendants.

[4] A perusal of the issues framed reveals that issue No.1 was as to whether respondent/defendant No.1 had agreed to sell the suit land as per the terms and conditions mentioned in the agreement to sell dated 30.10.2003 with onus of proof in respect thereto being on the petitioner / plaintiff whereas issue No. 5 was whether the alleged agreement to sell was the result of forgery committed by the petitioner / plaintiff in connivance with Gopi Chand, s/o Shri Charanji Lal, deed writer as alleged in P.O. No.2 of the written statement, with onus of proof in respect thereto being on the defendant.

[5] Learned counsel for the petitioner contends that the tape recorded version is essential since in the same it had been admitted by respondent/defendant No.1 that agreement dated 02.05.2003 between him and one Ajay Kumar had been ante dated after the execution of the agreement to sell dated 30.10.2003 between the petitioner / plaintiff and respondent/defendant No.1.

[6] Learned Counsel for the petitioner concedes that the petitioner/plaintiff had already closed his evidence in affirmative on 30.08.2010 and the case was at the rebuttal stage when the application, Annexure P/6 was filed.

[7] Learned Counsel for the respondent contends that in view of the provisions of Order 18 Rule 3 CPC, the proposed evidence was required to be led in the affirmative, and the petitioner / plaintiff having led entire evidence on all the issues without reserving right to lead evidence in rebuttal, prior to the commencement of evidence of the

defendants (respondents herein), dismissal of the application (Annexure P/6) by the learned Additional Civil Judge (Sr. Div.), Guhla vide order, Annexure P/8 dated 03.01.2012 in the light of the decisions in Surjit Singh and others vs. Jagtar Singh and others, 2007 (2) CCC 115 (PH) (DB), Sardara Singh vs. Baljit Singh and others, 2010 (1) Law Herald (PH) 355, Mohinder Singh vs. Balbir Singh and others, 2011 (2) CCC 766 (PH) was in accordance with law, therefore, immune from challenge.

8. I have considered the submissions of learned counsel. Hon'ble Division Bench of this Court in **Avtar Singh and another vs. Baldev Singh and others, 2015 (1) PLR 230** while considering a reference went into the following issues as arising for determination in cases where the onus of some issues was upon the defendant :-

*“(1) Whether it is mandatory for the trial court to provide an opportunity to the plaintiff to lead evidence in rebuttal only in those cases where he had reserved his right of rebuttal?”*

*“(2) Whether plaintiff can independently lead evidence in rebuttal over such issues, the onus of which is purely on the defendant?”*

*“(3) Whether Rule 3 Order 18 of the Code if read in conjunction with Order 18 Rule 1 of the Code widens the scope of evidence in rebuttal?”*

Hon'ble the Division Bench took into account earlier decisions, concern of the learned Single Judge, as also the provisions of Order 18 Rule 3 CPC and arrived at the conclusion of its being in complete and respectful agreement with the principles of law enunciated in **Jaswant Kaur v. Devinder Singh, AIR 1983 Punjab and Haryana 210 (DB)**, **Surjit Singh v. Jagtar Singh, 2007(1) RCR (Civil) P&H 537 (DB)** as also by a learned Single Bench in **National Fertilizers Ltd. v. Municipal Committee, Bathinda, AIR 1982 Punjab**

and Haryana 432 and of the said decisions not requiring reconsideration.

Relevant extract of the decision in Avtar Singh's case (supra) is as under :

2.....*"Apparent concern, that has been expressed by the learned Single Judge, through the reference, is that, the right of the plaintiff to lead evidence in rebuttal, as regards the issues, the onus of proof of which is upon the defendant, is inherent and indefeasible. Something, that naturally vests in the plaintiff, notwithstanding whether he has reserved any such right to lead rebuttal evidence. Therefore, if the interpretation drawn by the Division Bench in Surjit Singh's case (supra) is followed, there could well be a situation, where plaintiff is completely deprived of an opportunity to lead rebuttal evidence for no fault of his. Few such situations, in this regard, have been illustrated by the learned Single Judge, in the reference. Thus, a doubt is expressed as regards the correctness of the view drawn by the Division Bench in Surjit Singh's case (supra), on certain specific issues that have been culled out in the reference.*

3. *Before we proceed further, it would be apposite to refer to the provision of Order 18 Rule 3 CPC, at this juncture, which reads as thus:*

*3. Evidence where several issues - Where there are several issues, the burden of proving some of which lies on the party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.*

4. *To our minds, the afore-reproduced provision is clear, concise and incapable of any misconstruction. It clearly postulates that where there are several issues, the burden of*

*proof some of which lies on the other party, the party beginning (generally the plaintiff) has the option to either lead his entire evidence on all the issues or reserve its right to lead rebuttal evidence to the evidence that is to be led by the defendant, vis-a-vis the issues, the onus of proof whereof is upon the defendant. And in that case, the party beginning will produce its evidence on those issues after the other party has produced all his evidence. The expression "and the other party may then reply specially on the evidence so produced by the party beginning", do not conceive or contemplate yet another opportunity for the other party to lead any further evidence. Ex facie, its just a right to respond, reply and advance submissions, as regards the said evidence, is all, what is envisaged. Likewise, the further expression, "the party beginning will then be entitled to reply generally on the whole case", implies a right to respond, reply and advance submissions by the party beginning on the whole case. Meaning thereby, once the party beginning has led its entire evidence on all the issues or reserved its right to lead rebuttal evidence, as regards the issues, the onus of proof whereof is on the defendant, no third stage or situation, for the party beginning, to still lead evidence generally on the whole case, is contemplated. In any case, wherever a right to lead evidence is promised, the Legislature has consciously employed the expression "evidence". Therefore, the expression "the party beginning will then be entitled to reply generally on the whole case", does not relate to a right to lead evidence but only to respond, reply and advance submissions on the whole case. Any other interpretation, in our opinion, would result in complete misconstruction of the afore-reproduced provision and thus, cannot be countenanced.*

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6. *Division Bench of this court in Surjit Singh's case (supra), while relying upon a decision of an earlier Division Bench in Jaswant Kaur and another v. Devinder Singh, AIR 1983 Punjab and Haryana 210 (DB) and a Single Bench in National Fertilizers Ltd. v. Municipal Committee, Bhatinda*

*and another, AIR 1982 Punjab and Haryana 432(1), crystallized the true import of the provisions of Order 18 Rule 3. And the principle of law that has been enunciated is that plaintiff has the option to lead his entire evidence on all the issues, and in case, he intends to lead rebuttal evidence or answer the evidence that is to be led by the defendant, as regards the issues the onus of proof of which is upon the defendant, he shall have to reserve his right. Further, he shall have to exercise his option either when he closes his evidence in affirmative or in any case before the other party begins its evidence. But if he fails to reserve any such right, in terms of the provision of Order 18 Rule 3 CPC, his right to lead evidence in rebuttal would stand forfeited.*

*Question No. 2 i.e. whether plaintiff can independently lead evidence in rebuttal over issues, the onus of which is purely on the defendant ?*

*From a plain reading of the provisions of Order 18 Rule 3 CPC and the principle of law enunciated by the Division Bench in Surjit Singh's case (supra), it is axiomatic that in a case, where there are several issues, and the burden of proof some of which lies upon the defendant, plaintiff who is conscious to the lis and alive to the matter in issue, he can adduce his evidence in entirety vis-a-vis all the issues including those onus of proof of which is upon the defendant. Or having led the evidence in affirmative, as regards the issues, the onus of proof of which is upon the plaintiff himself, he can reserve his right to lead evidence in rebuttal.*

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*Question No.3 i.e. whether Rule 3 Order 18 of the Code if read in conjunction with Order 18 Rule 1 of the Code widens the scope of evidence in rebuttal?*

*On a due and thoughtful consideration, we are of the view that the provision, which perhaps intended to be referred to by the learned Single Judge was Order 18 Rule 2 and not Order 18 Rule 1. As Order 18 Rule 1, only defines as to which of the parties has a right to begin first. Be that as it*

*may. Provisions of Order 18 Rule 2 and Order 18 Rule 3 CPC are mutually exclusive and have their independent domains, and thus, operate in different situations. We deem it necessary to refer to the provision of Order 18 Rule 2 CPC, which reads as thus:*

*"2. Statement and production of evidence- (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.*

*(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.*

*(3) The party beginning may then reply generally on the whole case."*

*7. .... 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. That is how, Division Bench in Surjit Singh's case (supra) interpreted Order 18 Rule 3, to determine the scope and ambit of the right of the plaintiff to lead evidence in rebuttal, on issues the onus of proof of which is on the plaintiff. Thus, both the aforesaid provisions cannot be read in conjunction but independently and in isolation, as regards the right of the party beginning to lead rebuttal evidence"*

[9] Admittedly, as per the decision in Avtar Singh's case (supra),  
the petitioner / plaintiff having led entire evidence on all the issues without

reserving his right to lead rebuttal evidence even qua the issue, the onus of proof which was on the respondent / defendant, no further opportunity was available to him to still lead evidence in rebuttal. Since in the instant case no such right was reserved by the petitioner / plaintiff, impugned order, Annexure P/8 dated 03.01.2012 is in conformity with law and does not warrant any interference. Thus, finding no merit in the revision petition, the same is dismissed.

(B.S. Walia)  
Judge

25.01.2023  
'Amit'

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