

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(203)

CR-6733-2018

Date of Decision : February 14, 2023

Rakhi

.. Petitioner

Versus

Nirmala Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sandeep S. Majithia, Advocate, for the petitioner.

Mr. S.K. Aggarwal, Advocate, with
Mr. Tejas Bansal, Advocate and
Mr. Ojav Bansal, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present civil revision petition, the challenge is to the order dated 17.09.2018 (Annexure P-5) by which, the application filed by the respondent-plaintiff dated 12.09.2018 so as to allow the respondent-plaintiff to lead the rebuttal evidence, has been allowed.

Learned counsel for the petitioner argues that the impugned order passed by the trial Court allowing the rebuttal evidence to the respondent-plaintiff is contrary to the settled principle of law settled by the Division Bench of this Court in *Civil Revision No.2203 of 2010 titled as Avtar Singh and another vs. Baldev Singh and others, decided on 21.11.2014* to the effect that in case the plaintiff does not reserve the right

to lead the rebuttal evidence, his right to claim the said benefit stands forfeited and the same cannot be allowed, hence, the impugned order dated 17.09.2018 (Annexure P-5) passed by the trial Court is contrary to the settled principle of law settled in *Avtar Singh's case (supra)* and is liable to be set aside.

Learned counsel appearing on behalf of the respondent-plaintiff argues that in the facts and circumstances of the present case where, the defendant for the first time in the cross-examination brought a new fact that she had got the money from her father from a particular account of a particular bank, the same was required to be rebutted to show that the said statement is incorrect.

Learned counsel for the respondent-plaintiff submits that even if, the right to lead the rebuttal evidence was not claimed at the time of closing the affirmative evidence, still keeping in view the facts and circumstances of the case, the same can be allowed by the Court, which jurisdiction has been exercised by the trial Court in the facts and circumstances of the present case as the tenor of the impugned order clearly shows that the said evidence is required for in order to come to a correct decision, hence, the Court was well within its jurisdiction to allow the required evidence and the present civil revision petition is liable to be rejected.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The first question which arise for the consideration of this Court in the present civil revision petition is whether, once the respondent-

plaintiff did not reserve his right to lead the rebuttal evidence at the time of closing his affirmative evidence, the plaintiff can be allowed to lead the rebuttal evidence or not. The law on the said aspect is clear keeping in view the judgment of the Division Bench of this Court in *Avtar Singh's case (supra)*.

Learned counsel for the respondent-plaintiff has not been able to distinguish the case of the petitioner that the same is not covered in his favour as per the judgment in *Avtar Singh's case (supra)*, hence, the order dated 17.09.2018 (Annexure P-5) passed by the trial Court is contrary to the settled principle of law in *Avtar Singh's case (supra)* and cannot be sustained.

The other argument which is being raised by the learned counsel for the respondent-plaintiff is that the tenor of the impugned order shows that the said evidence is required for the proper adjudication of the case. Though, the claim of the plaintiff to lead the rebuttal evidence is not being accepted, keeping in view the settled principle of law but the said order will not come in the way of Court in case, the Court on its own directs that certain evidence need to be brought on record for proper adjudication as permissible under law.

As in the present case, the order has been passed on the application filed by the respondent-plaintiff, the same is contrary to the settled principle of law cited hereinbefore. In case, the Court on its own require any evidence to be on record and in its wisdom pass any appropriate order, the same will be within the jurisdiction of the Court.

Keeping in view the above, the impugned order dated 17.09.2018 (Annexure P-5) passed by the trial Court is contrary to the settled principle of law and is accordingly set aside.

The present civil revision petition is allowed in above terms.

February 14, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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