

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-813-2021 (O&M)

Date of Decision: September 05, 2023

Meenakshi Verma

...Petitioner

Versus

M/s GD Infrastrucutre and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Rajeev Anand, Advocate
for the petitioner.

Mr.Ashish Aggarwal, Senior Advocate with
Mr.Aditya Jain, Mr.Rahul Vohra and
Ms.Aashna Aggarwal, Advocates
for respondents No.1 to 3.

ARCHANA PURI, J.

Through the present petition under Article 227 of the Constitution of India, the petitioner has invoked the jurisdiction of this Court to challenge the order dated 19.03.2021 (Annexure P-6) passed by learned Court below, whereby, the objections filed by the petitioner with other defendants, had been dismissed, by holding that the respondents-plaintiffs have right to lead rebuttal evidence.

The facts, as culled out from the paperbook are that contesting respondents-plaintiffs had filed a suit for seeking declaration, mandatory

injunction, recovery, permanent injunction and specific performance of the contract-agreement dated 15.04.2008, *inter alia*, on the ground that Managing Director of the defendant-company namely, Sh.Ashok Varma, had recognized, appreciated and acknowledged the value and worth of the services being rendered by the plaintiffs and therefore, had entered into an agreement dated 15.04.2008, which had never honoured by the defendants, after the death of Sh.Ashok Varma.

Upon notice, the defendants made appearance and filed the written statement, thereby, asserting that in fact, plaintiffs themselves are not ready to perform their part of contract and also took the plea about the agreement, being void and obtained by playing fraud upon the defendants. Issues were framed in the present case on 16.05.2016. Pursuant to the framing of the issues, the respondents-plaintiffs failed to conclude their evidence and consequently, the evidence of the respondents-plaintiffs was closed by order on 27.02.2018, in the presence of counsel for the plaintiffs as well as defendants. Even, the evidence of the defendants was closed by order on 14.01.2020.

It was in fact, at this stage, mentioned by learned Court below, for the rebuttal evidence, that the respondents-plaintiffs have moved an affidavit of Virender Kumar Sood s/o Sh.Karam Chand Sood, an ex-employee of petitioner-defendant, on 07.02.2020, copy whereof is Annexure P-8.

In the given circumstances, the petitioner-defendant No.12 had filed an application/objection for the rejection of the affidavit filed by the plaintiffs in rebuttal evidence. Reply was also filed and thereupon, the

impugned order was passed, whereby, the aforesaid application/objection was dismissed.

Not satisfied with the same, the petitioner-defendant No.12 has filed the present revision petition.

Before proceeding further, it is pertinent to mention that whole claim of the contest between the parties, relates to the agreement dated 15.04.2008. On the basis of the pleadings of the parties, various issues were framed, copy whereof is Annexure P-7. Few of relevant issues are as herein given:-

1. Whether the plaintiffs are entitled for decree of declaration that the agreement dated 15.4.2008 executed by and between the parties is legal and valid document and binding on defendants or not?OPP.
5. Whether the plaintiffs are entitled for a decree of specific performance of Clause A, 1(a) of the agreement dated 15.04.2008, in favour of the plaintiffs and against the defendants as prayed for?OPP
10. Whether the agreement is void being obtained by fraud, without consideration, unregistered and cannot be enforced? OPD.

In the written statement, the defendants had taken the plea of fraud. Such, being the assertion, the respondents-plaintiffs were clear about the ground on which the challenge was given to the rights, so asserted in the plaint. As such, respondents-plaintiffs was to lead evidence, relating to the controversy, at the stage, when they were to lead evidence in affirmative.

It should be noted that on 27.02.2018, when the evidence of the plaintiffs-in-affirmative was closed by the Court order, copy whereof is

Annexure P-4, counsel for the plaintiffs as well as defendants were present. At that stage, no right, as such, was reserved to lead evidence in rebuttal. In the given circumstances, the plaintiffs could not produce the rebuttal evidence, as a matter of right.

The scope and ambit of the right of the plaintiffs to lead evidence in rebuttal, was considered by the Hon'ble Division Bench of this Court in *Surjit Singh and others vs. Jagtar Singh and others, 2007(1) RCR (Civil) 537*, wherein, it was observed as herein given:-

"In our opinion, Order 18 Rule 3 of the CPC 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 CPC. 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) 2000 (2) RCR (Civil) 133 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) 2002 (1) PLR 99. 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 terms of the aforesaid dictum, even further, the observations so made, were reiterated in ***Jagdev Singh and others vs. Darshan Singh and others, 2007(1) RCR (Civil) 794.*** In ***Avtar Singh and another vs. Baldev Singh and others in CR-2203 of 2010 decided on 21.11.2014,*** it was observed, as herein given:-

“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?”

While answering this question, it was observed as herein given:-

“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 P&H 210 (DB) and a Single Bench in National Fertilizers Ltd. v. Municipal Committee, Bhatinda and another, AIR 1982 P&H 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.”

Adverting to the case in hand, it is pertinent to mention that even though, on the basis of pleadings, coming forth, specific issue has been framed about the agreement to be void, being obtained by fraud, without consideration, unregistered and cannot be enforced, it becomes evident that the respondents-plaintiffs were aware of the claim of the petitioner-defendants. In the given circumstances, the evidence was to be led in affirmative by the respondents-plaintiffs. In the eventuality of closing of evidence by order, it was required to reserve the right to lead evidence in rebuttal specifically, but however, at the time, when it was closed by order, no such right was reserved, to lead evidence in rebuttal on such an issue, the onus of which, is on the defendant.

Even, under Order XVIII Rule 2(3) CPC, a plaintiff cannot lead evidence in rebuttal, on the entire case, after the defendant has completed his evidence. Perusal of the affidavit of Virender Kumar Sood, which is intended to be brought on record, in rebuttal evidence, has been placed on record as Annexure P-8 and it reveals about the assertion, so made in the same, not relating only to the issue of fraud, the onus whereof, was on defendants, but it also makes an assertion with regard to the evidence, which was required to be proved in affirmative.

In the light of the same, it was not within the purview of the respondents-plaintiffs to bring this affidavit, at the stage of rebuttal evidence.

In view of the aforesaid discussion, the impugned order dated 19.03.2021 is set aside and resultantly, the application/objections filed, at the behest of petitioner-defendant No.12, for rejection of affidavit Virender Kumar Sood in rebuttal evidence, is allowed.

As such, the present revision petition stands allowed.

September 05, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No