

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

CR 2446/2019 (O&M)

Date of decision: 07/02/2023

Smt.Sumitra Devi

.....Petitioner.

Vs.

Inderjit Dev

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Anshul Mangla, Advocate for the petitioner.

Mr. Munish Mittal, Advocate for the respondent

Nidhi Gupta, J.

Present revision petition has been filed by the petitioner/defendant seeking setting aside of the order dated 11.3.2019 passed by the learned Civil Judge (Senior Division), Yamuna Nagar at Jagadhari, in CS No.367/2017 titled as 'Inderjit Dev v Smt. Sumitra Devi', whereby the application filed by the respondent/plaintiff to get compared the signatures of petitioner/defendant over Ex.P1-cheque no. 708746 dated 11.4.2016, and Ex.P2-cheque No.708747 dated 12.4.2016, through Handwriting and Fingerprint Expert, with the admitted signatures of the petitioner/defendant over the notice/summons, written statement, affidavit and Vakalat Nama etc., tendered by her in the present case, has been allowed.

It is submitted by the learned counsel for the petitioner that respondent had filed the present suit for recovery of Rs.2 lacs, allegedly advanced by the respondent to the petitioner by way of the two aforementioned account payee cheques which are stated to have been encashed by the petitioner.

It is firstly submitted that the application has been filed at a highly belated stage. It is stated that the civil suit was filed on 1.3.2017, to which the petitioner filed written statement on 2.8.2017. Thereafter, the following issues were framed by the learned trial court on 2.8.2017: -

- “1. Whether the plaintiff is entitled for the relief of recovery of Rs.2,00,000/- as prayed for? OPP.
2. Whether the present suit is not legally maintainable? OPD.
3. Whether the plaintiff has no locus standi to file the present suit? OPD.
4. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD.
5. Whether the plaintiff has got no cause of action to file the present suit? OPD.
6. Whether the suit of the plaintiff is liable to be rejected under Order 6 Rule 5? OPD.
7. Relief’.

Then evidence was led by the parties and when the case was at the stage of rebuttal evidence, then the respondent filed the present application on 16.1.2018 (Annexure P5).

It is further submitted that in the plaint there is no averment whatsoever that the petitioner had withdrawn the amount of 2 lacs by signing on the backside of the cheques. Learned counsel referred to para 2 of the plaint where it has simply been stated that the defendant got the cheques encashed, and nowhere has it been stated that the defendant had withdrawn this amount by signing on the backside of the cheques. It is stated that perusal of the written statement filed by the petitioner to the plaint shows that in para 7 of the preliminary objections as well as in para 2 of the reply on merits, petitioner has

categorically denied that she had ever borrowed the amount from the respondent or that she had ever received the said amount through cheques and therefore, where was the question of withdrawal the money, or even of signing on the back of the cheques. It is submitted that in view of this specific denial by the petitioner there was no occasion or requirement for the plaintiff to lead evidence in rebuttal. It is submitted that the application has been filed by the respondent at the belated stage to fill the lacuna in his case and respondent cannot be permitted to do so.

It is further submitted that in any event, the application of the respondent could not have been allowed in view of the provisions of Order 18 Rule 3 CPC which specifically stipulates that:-

“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”.

Thus, plaintiff would have the right to adduce evidence by way of rebuttal where the burden of proof was on the defendant. Admittedly, in the present case the onus of proof of issue no.1 is on the plaintiff and therefore, he could not be allowed to lead evidence in rebuttal on this issue. It is further submitted that the right to lead evidence in rebuttal was not reserved by the plaintiff at the time of concluding his evidence. A perusal of the zimni order dated 13.11.2017 of the learned Trial Court at page 8 of the paper book shows

that learned counsel for the respondent has simpliciter stated that “*I close the evidence*” and did not reserve any right to lead any evidence in rebuttal and therefore, the respondent cannot now be permitted to do so.

In response, it is submitted by the learned counsel for the respondent that the respondent was constrained to move the application at this stage as it is only during cross-examination that the petitioner had denied signing on the backside of the cheques. It is submitted that petitioner appeared as DW2 and in her cross-examination she stated that she had seen the aforesaid cheques Ex.P1 and Ex.P2 and her signatures are not present on the cheques. It is only then that the occasion arose for the respondent to prove her signatures borne on the back of the said cheques.

No other argument has been raised on behalf of the parties.

Heard Ld. Counsel.

I find merit in the submissions made on behalf of the petitioner.

A perusal of the plaint shows that there is no averment therein that the petitioner had affixed any signatures on the back of the cheques. All that has been stated therein is that the respondent had issued two cheques Ex.P1 and Ex.P2 and the same had been got encashed by the petitioner for her personal use. Moreover, in her written statement to the suit, the petitioner has categorically denied borrowing the money, what to talk of withdrawing money. There was no occasion to deny affixing signatures on the back of the cheques as such an averment was not made in the plaint. In the reply filed to the said application the petitioner has specifically denied in para 4 thereof that the petitioner has not put her signatures on the said cheques as alleged; and in any case, question of putting any signatures on the said cheques does not arise at all as petitioner had not

borrowed any money from the respondent. Therefore, in my opinion the respondent is resorting to dilatory tactics to improve his case.

Further, legal position in respect of Order 18 Rule 3 CPC is very clear. In this regard reference may be made to Division Bench judgment of this Court in '**Surjit Singh and others v Jagtar Singh and other**', **Law Finder Doc Id # 124851** wherein it has been held in para 15 thereof 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)*.”

The aforesaid view has been reaffirmed by this Court in judgment rendered in the case of ‘**Mohinder Singh v Balbir Singh and others**’, **Law Finder Doc Id # 253899**; and ‘**Ajmer Singh v Gurmit Singh and others**’, **Law Finder Doc Id # 865076** wherein it has been reiterated that party cannot be allowed to lead evidence in rebuttal in respect of an issue, the onus of which is on the party itself; and party has to adduce evidence in affirmative including examination of handwriting expert in discharge of onus of proof which is on the said party. In **Ajmer Singh (supra)** this Court held that :-

“Civil Procedure Code, 1908, Order 18, Rule 17A - Rebuttal evidence - Plaintiff cannot be allowed to lead evidence in rebuttal in respect of an issue, the onus of which was on the plaintiff himself - No right was reserved to lead the evidence in rebuttal - Plaintiff cannot be allowed to lead evidence in rebuttal in order to discharge onus of issue, which he or she could have discharged while leading evidence in affirmative - No expert witness can be allowed at this stage.”

Thus, it is settled principle of law that the plaintiff cannot be allowed to lead evidence in rebuttal in respect of an issue onus of which was on plaintiff himself. The plaintiff cannot be allowed to lead evidence in rebuttal in order to discharge onus which he should have discharged while leading evidence in affirmative. Therefore, no expert witness could have been allowed at this

stage. Moreover, no right was reserved by the respondent to lead evidence in rebuttal by the counsel for the respondent at the time of concluding his evidence. Accordingly, as per ratio of the above said judgments, the respondent could not now be permitted to lead evidence in rebuttal on an issue the onus of proof of which was on the respondent, especially in view of the fact that the respondent had not even reserved the right to lead evidence in rebuttal.

For the reasons stated above, the present revision petition is allowed, and the impugned order dated 11.3.2019 passed by Civil Judge (Senior Division), Yamuna Nagar at Jagadhari in CS No.367/2017 is set aside.

Application(s),if any, also stand disposed of.

(Nidhi Gupta)
Judge

07/02/2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No