



CR-296-2020 (O&M)

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**121 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CR-296-2020 (O&M)**

Date of decision: 21.05.2024

Baldev Raj

....Petitioner

Versus

Pawan Kumar

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ravindra Jain, Advocate for the petitioner

Mr.S.S.Dinarpur and
Mr. Rohit Singh, Advocates for the respondent**ANIL KSHETARPAL, J (Oral)**

1. On 06.05.2024, the following order was passed by this

Court:-

The respondent has filed the suit for possession by way of specific performance of the agreement to sell against the petitioner, which is pending.

Upon reappreciation of pleadings, the trial Court settled the following issues:-

“a. Whether the plaintiff is entitled to the possession by way of specific performance of agreement dated 10.03.2015 in respect of the suit property? OPP

b. Whether plaintiff was/is ready and willing to perform his part of the contract? OPP

c. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP

d. Whether the suit is not maintainable? OPD

e. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD

f. Whether the plaintiff has concealed the true and material facts from the Courts? OPD

g. Relief.”

Thereafter, the respondent (plaintiff) closed his evidence without reserving any right of rebuttal. Subsequently, defendant (petitioner) led his evidence. When the case was at the stage of rebuttal and arguments, the plaintiff (respondent) filed an application for permission to



take photographs of signatures of defendant from agreement to sell, receipt, vakalatnama, written statement, affidavit and the specimen signature sheet. The same has been allowed by the Court.

The correctness of the aforesaid order is challenged before this Court.

The learned counsel representing the petitioner submits that the scope of rebuttal evidence is limited and in the facts and circumstances of the present case, the plaintiff is not entitled to lead rebuttal evidence.

Per contra, the learned counsel representing respondent (plaintiff) submits that the defendant examined handwriting and fingerprint expert in its evidence. Hence, the respondent has correctly been granted opportunity to lead rebuttal evidence.

*Hon'ble Division Bench in **Surjit Singh and others Vs. Jagtar Singh and others, Civil Revision No.1213 of 2005, decided on 29.09.2006**, has held that the plaintiff is permitted to lead rebuttal evidence only with respect to the issues, onus whereof is upon the defendant.*

In this case, onus to prove issue No.c, d, e and f are upon the defendant.

It is further evident that the trial Court has totally overlooked this aspect. In fact, the plaintiff never filed an application for leading rebuttal evidence.

*At this stage, the learned counsel representing the respondent relies upon the judgment passed in **Sharanjit Kaur Vs. Smt. Parveen Mahal and others, 2023 (3) ICC 510**.*

The learned counsel representing the petitioner prays for short adjournment to study the same before assisting the Court.

List on 21.05.2024, in the urgent list."

2. Once again, the learned counsel representing the parties have been heard at length. Learned counsel representing the petitioner reiterates his submissions as recorded in the order dated 26.05.2023.

3. Per contra, the learned counsel representing the respondent submits that the handwriting and finger print expert has already given his testimony in the court and he has been permitted to be cross-examined by the defendant.

3. Keeping in view the peculiar facts that the evidence has already been led, therefore, the revision petition is disposed of with liberty to the petitioner to lead counter evidence, if any. It will not be appropriate to order deletion of evidence which has already come on record. The reading of the handwriting and finger print expert and his deposition shall be treated as additional evidence to obviate the difficulty of scope of rebuttal evidence.
4. With these observations, the revision petition is disposed of.
5. All the pending miscellaneous applications, if any, are also disposed of.

21.05.2024
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE