



CR-6391-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(116)

CR-6391-2023 (O&M)
RESERVED ON 16.01.2025
DATE OF DECISION:- 01.03.2025

SAPINDER SINGH

... PETITIONER

VERSUS

GURPREET SINGH

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Hitesh Ghai, Advocate
for the petitioner.

Mr. S.S.Gill, Advocate
for the respondent.

SUVIR SEHGAL, J.

1. Petitioner/defendant has approached this Court by way of instant revision petition assailing order dated 03.07.2023, Annexure P-7, passed by the learned Civil Judge (Junior Division), Payal, whereby an application filed by respondent/plaintiff under Section 151, CPC for seeking permission to examine a forensic expert has been accepted.
2. Counsel for the petitioner/defendant has urged that after closing his evidence in the affirmative, respondent/plaintiff cannot be permitted to produce evidence in rebuttal regarding issues the onus of which was upon the plaintiff. It is his assertion that the plaintiff can be permitted to lead evidence in rebuttal only on the issues in which the burden of proof is on the defendant, unless the plaintiff specifically reserves his right to do so. It is also his stand that after the omission of Order 18 Rule 17-A,



CPC, a party does not have a right to lead additional evidence. He has placed reliance upon

- (i) *Surjit Singh and others Versus Jagtar Singh and others, 2007 (1) PLR 552;*
- (ii) *Sukhwinder Pal Singh Versus Bhupinder Kaur, 2014 (3) PLR 19;*
- (iii) *Ram Rattan Versus Anand Pandit and others, 2009 (5) R.C.R. (Civil) 696;*
- (iv) *Gurjeet Kaur Versus Mani Singh and another, 2015 (1) PLR 643;* and
- (v) *Mukesh Gulati Versus Suraj Prakash Chauhan and others, 2015 (45) R.C.R. (Civil) 6.*

3. While supporting the impugned order, counsel for the respondent has argued that a handwriting expert had been examined by the petitioner/defendant while leading his evidence, who submitted a biased report and in order to rebut it, respondent/plaintiff intends to examine Dr. Inderjit Singh, Handwriting and Fingerprint Expert, to give a report regarding the disputed signatures on the pronote and receipt dated 08.05.2014 as well as his photograph. It is his case that occasion to lead this evidence arose only after the defendant had examined an expert. Counsel asserts that merely because plaintiff's evidence had been closed by Court order, does not debar him from leading additional evidence. He has made a reference to the following judgments:-

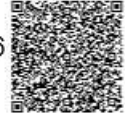
- (i) *Pappu @ Rai Singh Versus Smt. Chander Wati and others, 2012 (4) PLR 607;*
- (ii) *Parkash Kaur and others Versus Joginder Singh and others, 2017 (4) R.C.R. (Civil) 899;*



- (iii) *L. M. P. Precession Engineering Company (P) Ltd. Versus Ram Narayan, 2004 (1) Civil Court Cases 429;*
- (iv) *Y.S.Manchanda Versus Jitender Chopra, 2015 (14) R.C.R. (Civil) 713;* and
- (v) *Kewal Singh Versus Jagjit Singh, 2008 (1) PLR 173.*

4. I have heard counsel for the parties and considered their submissions, besides examining the paper-book with their able assistance.
5. Respondent/plaintiff filed a suit for recovery of Rs.4,57,000/-, along with future interest, on the basis of a pronote and receipt dated 08.05.2014 executed in his favour by the petitioner/defendant and for permanent injunction restraining the petitioner/defendant from alienating his share in the immovable property described in the suit. Petitioner/defendant is contesting the suit by filing a written statement, wherein, besides taking various preliminary objections, a stand has been taken that the pronote and receipt are forged documents and that the petitioner/defendant never borrowed any amount from the respondent/plaintiff. He specifically denied his signatures on the documents as also on the register of the deed writer. On the basis of the pleadings of the parties, Trial Court framed the following issues:-

- “1. *Whether the plaintiff is entitled to recovery as prayed for? OPP*
2. *Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
3. *Whether the suit of the plaintiff is not maintainable? OPD*
4. *Whether plaintiff has no cause of action and no locus standi to file the present suit? OPD*



5. *Whether the plaintiff has not come to the Court with clean hands? OPD*
6. *Relief.”*

6. Plaintiff produced some witnesses in support of his case and by order dated 26.02.2020, which is reproduced hereunder, his evidence was closed by an order passed by the Court:-

*“Present: Sh. Shamsher Singh Gill Advocate for plaintiff.
Sh. G.S Matharu Adv for defendant.*

PW-1 Gurpreet Singh present and his cross-examination is treated as nil. Perusal of the case file reveals that the present case is pending conclusion of evidence of plaintiff since long time. On the last date last opportunity was given to the plaintiff for plaintiff evidence. Therefore, this court does not deem it fit to adjourn the present case, further for the evidence of plaintiff. Hence, the oral evidence of plaintiff is closed by order. Now case stands adjourned to 18.3.2020 for documentary evidence if any by plaintiff and for defendant evidence on filing PF/DM and list of witnesses within three days, failing which no assistance of the court shall be provided.”

7. Defendant concluded his evidence on 28.02.2023 and the trial was fixed for rebuttal evidence. On 28.02.2023, plaintiff filed an application, Annexure P-5, for examining Dr. Inderjit Singh, Handwriting and Fingerprint Expert. After contest, application has been accepted by the Trial Court vide order impugned herein.
8. A perusal of the issues framed by the Trial Court shows that the onus of the first two issues was on the respondent/plaintiff. Burden to prove the pronote as well as the receipt was on the respondent-plaintiff, more



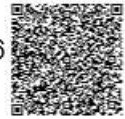
so, as the petitioner/defendant had specifically denied both the documents as well as his signatures and had taken a plea that the documents are forged. There was a heavy onus on the respondent/plaintiff to establish that the pronote and receipt had been executed by the petitioner/defendant by producing ocular and documentary evidence and a forensic expert, if he deemed it necessary. After repeated opportunities for over one and a half year, the Trial Court by order dated 26.02.2020 closed the plaintiff's evidence. This order became final as the respondent/plaintiff neither challenged it, nor did he at any stage reserve any right for leading evidence in rebuttal.

9. Interpreting Order 18 Rule 3, CPC, a Division Bench of this Court in **Surjit Singh's case (supra)** has observed as under:-

"21. 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 reference is answered accordingly. Let the Civil Revision be placed before the Single Judge for decision of the same on merits.”

10. Another Division Bench of this Court in *Jagdev Singh and others Versus Darshan Singh and others, 2007 (1) R.C.R. (Civil) 794* held that plaintiff cannot as a matter of right lead evidence in rebuttal on issues, the onus of which is upon him. Another Division Bench in *Avtar Singh and another Versus Baldev Singh and others, 2015 (1) PLR 230* held that the 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 which is upon the defendant, he shall have to reserve his right. It has been clarified that the plaintiff 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. If he fails to reserve such right, in terms of the provision of Order 18 Rule 3, CPC, his right to lead evidence in rebuttal would stand forfeited. As the legal position has been authoritatively settled by three different Division Benches, the judgments relied upon by the counsel for the respondent are not applicable.
11. Adverting to the facts of the present case, as has been noticed above, plaintiff's evidence was closed by a Court order on 26.02.2020. Plaintiff did not insist on reserving a right to lead evidence in rebuttal nor such a right has been exercised by him at any time before the defendant closed his evidence. Therefore, the plaintiff does not have a



right to lead evidence in rebuttal and the Trial Court has clearly erred in accepting the application filed by him to produce an expert in evidence.

12. There is another reason on account of which the impugned order cannot be sustained. Even if the application, Annexure P-5, filed by the respondent/plaintiff is treated as an application for additional evidence, the same cannot be permitted. The settled legal position is that if evidence of a party is closed by an order of the Court, which is not challenged and becomes final, the party cannot be allowed to adduce additional evidence as that would tantamount to circumventing the order of closure of oral evidence passed by the Court, until and unless sufficient ground is advanced to the satisfaction of the Court that the evidence could not be led at the appropriate stage. Reference in this regard may be made to a judgment of a Co-ordinate Bench of this Court in *Smt. Daljit Kaur Versus Amarjit Kaur and another, 2015 (2) PLR 121*. This judgment is squarely applicable to the facts of the present case and the impugned order, which suffers from material irregularity and illegality, cannot be sustained.
13. Accordingly, impugned order dated 03.07.2023, Annexure P-7, is set aside and the application, Annexure P-5, filed by the respondent/plaintiff is declined.
14. Revision petition is allowed, though with no order as to costs.
15. Pending application(s) shall stand disposed off.

(SUVIR SEHGAL)
JUDGE

01.03.2025
kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No