

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.1948 of 2022
Reserved on 17.05.2022
Date of Decision : 20.05.2022

Simarjit Kaur @ Simerjeet Kaur @ Simarjeet Kaur ...Petitioner

VERSUS

Maninder Kaur ...Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajinder Goyal, Advocate for the petitioner.

ALKA SARIN, J.

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 16.04.2022 (Annexure P-12) whereby application filed by the defendant-petitioner for rejection of the affidavit of witness Narjit Singh Dhillon has been dismissed.

Brief facts relevant to the present *lis* are that in the present case vide order dated 21.07.2017, the Civil Judge (Junior Division), Kurukshetra directed the defendant-petitioner to lead her evidence first as burden to prove issue nos.1 and 2 was upon the defendant. Thereafter, the defendant-petitioner closed her evidence vide a separate statement dated 29.01.2020 and the case was adjourned for rebuttal evidence. The plaintiff-respondent had not led any evidence in affirmative. Vide order dated 09.02.2021 the plaintiff-respondent was ready to deposit the diet money for the witnesses. Thereafter, the affidavit of one Narjit Singh Dhillon was filed in evidence by the plaintiff-respondent. The defendant-petitioner moved an application (Annexure P-10) for rejection of the affidavit of Narjit Singh Dhillon on the ground that the plaintiff-respondent could not be directed to lead evidence in

affirmative in the garb of rebuttal evidence. The plaintiff-respondent filed a reply (Annexure P-11) to the said application. Vide impugned order dated 16.04.2022 (Annexure P-12) the Trial Court dismissed the application. Aggrieved by the said order, the present revision petition has been preferred.

Learned counsel for the defendant-petitioner has contended that the defendant-petitioner was directed to lead her evidence vide order dated 21.07.2017 on issues the onus of which was cast upon the defendant-petitioner. Thereafter, the matter was adjourned for rebuttal evidence and the plaintiff-respondent in the garb of rebuttal evidence is wanting to lead evidence in affirmative. Learned counsel for the petitioner has relied upon judgments of this Court in **Surjit Singh & Ors. vs. Jagtar Singh & Ors. [2007(1) RCR (Civil) 537]** and **Mam Raj vs. Smt. Raghbiri & Ors. [2014(62) RCR (Civil) 819]**.

I have heard learned counsel for the defendant-petitioner.

In the present case the plaintiff-respondent filed a suit for declaration and consequential relief of permanent injunction. In the written statement the defendant-petitioner set up a Will dated 02.11.2011 in her favour. The issues were framed and vide order dated 21.07.2017 application filed by the plaintiff-respondent was allowed for directing the defendant-petitioner to lead her evidence on issues the onus of which was cast upon the defendant-petitioner. Thereafter, an application was filed by the defendant-petitioner for recalling order dated 21.07.2017. The said application was contested by the plaintiff-respondent and vide order dated 28.02.2018 the same was dismissed by the Trial Court. After the defendant-petitioner had led her evidence on issues the onus of which was cast upon her, the case was adjourned for rebuttal evidence of the plaintiff-respondent. The plaintiff-

respondent filed affidavit of Narjit Singh Dhillon. On 15.12.2021 an application (Annexure P-11) was filed by the defendant-petitioner for rejection of the said affidavit of the witness on the ground that the plaintiff-respondent by way of the affidavit wanted to lead evidence in affirmative in the garb of rebuttal evidence, which is not permissible in law. The Trial Court vide a detailed order has noticed that no evidence has been led by plaintiff-respondent in affirmative. The order dated 21.07.2017 was only to the extent that defendant-petitioner was directed to lead her evidence on issues the onus of which was cast upon her. The plaintiff-respondent is yet to lead her evidence. The argument raised by learned counsel for the defendant-petitioner that the plaintiff-respondent cannot be permitted to lead affirmative evidence deserves to be rejected. No evidence has been lead by the plaintiff-respondent on issues *qua* which the onus was cast upon the plaintiff-respondent. A specific finding has been recorded by the Trial Court that the plaintiff-respondent is yet to lead her evidence in affirmative. It has also been noticed by the Trial Court that instead of adjourning the case for plaintiff's evidence, inadvertently, the case was fixed for rebuttal evidence. Merely because an inadvertent mistake was caused by the Court while adjourning the matter the plaintiff-respondent cannot be deprived of her valuable right of leading evidence in affirmative on issues the onus of which was cast upon her. There cannot be any quarrel with the proposition of law as laid down in the judgments in **Surjit Singh's** case (*supra*) and **Mam Raj's** case (*supra*). However, the same would be of no help to learned counsel for the defendant-petitioner inasmuch as in the present case a specific application was filed and the defendant-petitioner was directed to lead her evidence first *qua* issues the onus of which was cast upon her.

Thereafter, the plaintiff-respondent would have a right to lead her evidence in affirmative on issues the onus of which was cast upon the plaintiff-respondent as well as in rebuttal on issues the onus of which was cast upon the defendant-petitioner and *qua* which the evidence has already been led.

In view of the above, I do not find any illegal or infirmity in the impugned order dated 16.04.2022 passed by the Trial Court. The present revision petition being devoid of any merit is dismissed.

Dismissed.

20.05.2022
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO