

RAJASTHAN HIGH COURT

L.M.P. Precision Engineering Company (P) Ltd.

Vs.

Ram Narayan

S.B. Civil Revision Petition No. 195 of 1999

(Praksah Tatia, J.)

04.08.2003

JUDGMENT

Prakash Tatia, J.

1. Heard learned counsel for the parties and perused the impugned order dated 10th February, 1999.
2. This Court admitted the revision petition on 12th May, 2000 on the plea raised by the petitioner that whether in case the plaintiff already led evidence in the first instance itself on the issues burden whereof was upon the defendant, can be led evidence in rebuttal again.
3. The trial Court in its order dated 10th February, 1999 observed that the plaintiff led evidence only on issue Nos. 3 and 4, burden of which was upon the plaintiff and also observed that the plaintiff while disclosing the evidence, kept the right of rebuttal reserved in the presence of the counsel for the defendant, which was never objected by the defendant and therefore, the trial Court permitted the plaintiff to lead evidence in rebuttal.
4. Learned counsel for the petitioner vehemently submitted that the plaintiff led full evidence on the issue of which burden was upon the defendant and therefore, legally under Order 18 Rule 3 C.P.C., he was not entitled to lead evidence in rebuttal after the evidence of the defendant. It is also submitted that mere receiving right of rebuttal itself cannot give any right to lead evidence in rebuttal unless this legal right is available to the plaintiff in accordance with law. It is also submitted that his Court had occasioned to examine this aspect of the matter and there was one controversy about the stage at which the other party be made aware about the intention of the plaintiff

that plaintiff will lead evidence in rebuttal. In addition to that, there was controversy whether the plaintiff can lead evidence on the issue, which the plaintiff has touched in his evidence in beginning on the issue of which burden was upon the defendant and in all those cases, this Court has consistently taken a view that the right to lead evidence in rebuttal is available to the plaintiff only when the plaintiff has not led any evidence in beginning. Learned counsel for the petitioner relied upon the judgments of this Court delivered in the case of 1978 RLW 61, 1977 WLN (UC) 55, AIR 1970 (Raj.) 278 & AIR 1977 (Orissa) 87.

5. So far as the point in controversy involved in the dispute is more with respect to whether the plaintiff led any evidence on the issue of which burden to prove was on the defendant.

6. In this case, record was called. Learned counsel for the petitioner tried to demonstrate by reading the evidence of the plaintiff and evidence led in rebuttal to show that the plaintiff has already led evidence on the issue in beginning therefore, he cannot be permitted to lead evidence in rebuttal and the trial Court went wrong in permitting the plaintiff to lead evidence in rebuttal.

7. It will be worthwhile to mention here that the trial Court framed total six issues and burden to prove two issues was upon the plaintiff, which are (i) whether the Court has jurisdiction to hear the suit and another is (ii) whether the plaintiff is entitled for decree of rendition of account against the defendant. A bare perusal of the averments made in the plaint and particularly the relief claimed by the plaintiff in the suit, it is clear that the entire relief of the plaintiff is only that the plaintiff is entitled for the decree for rendition of account against the defendant and consequently, the plaintiff is entitled for the amount, which is found due in the defendant of the plaintiff this issue covers the entire suit itself, which includes all the facts mentioned in plaint on the basis of which plaintiff becomes entitled to relief. It appears from the detail evidence of the plaintiff that the plaintiff led evidence in detail to prove this issue and in that sequence he narrated the entire sequence on the basis of which the plaintiff is claiming the relief against the defendant. When such a situation arises where there are two sets of issues; one putting burden upon the plaintiff to prove the issue and another putting burden upon the defendant and in that situation, if some of the subjects required to be covered to prove issue by the plaintiff by giving evidence or even for the purpose of making the evidence clear so that the case may be well understood by the Court and to make the things clear, if plaintiff leads evidence to prove his case, in all those cases, it is not possible to hold that the plaintiff has touched the issues, burden of which was

upon the defendant. It depends upon the facts of each case.

8. The proving of an issue by the defendant depends upon the specific plea taken in defense by the defendant and that burden can be discharged by the defendant by proving his case by his evidence and then the plaintiff can rebut those issues of the defendant by leading evidence. Sometimes, it happens that one issue is framed placing burden upon the plaintiff and another issue may be an issue of rebuttal of the issue framed for plaintiff, then in that case, the plaintiff if leads evidence to prove his case, it is not necessary to say that he led evidence to meet with the defense of the defendant because of the reason that the plaintiff has right to prove his case and for that purpose he may not take risk of not proving his case on his assumption that the facts pleaded may be treated as admitted by the defendant by the Court, which may be disputed or may be interpreted subsequently in otherwise way on the basis of the pleas of the defendant. Therefore, what evidence the plaintiff has led in the issues and whether the plaintiff touched the issue of the defendant depends upon the facts of the case and no formula can be provided for deciding the matter.

9. Here in this case, after going through the evidence and in view of the very broad issue framed by the trial court, if the plaintiff led evidence which after going through the evidence appears to be touching to his own case only, therefore, the trial Court was not wrong in holding that the plaintiff has right to lead evidence in rebuttal.

10. So far as the judgments relied upon by the learned counsel for the petitioner is concerned, the propositions laid down by the various judgments is not in question and cannot be in question in view of the fact that other party has right to know whether the plaintiff wants to lead evidence in rebuttal and therefore, the judgments relied upon by learned counsel for the petitioner has no application to the facts of the case mentioned above.

11. The revision petition of the petitioner is dismissed. The record of the case be sent to the trial Court forthwith as the case is pending for final disposal.

Revision dismissed.