

CS 235/17

NITIN KUMAR SHARMA Vs. AJAY GOYAL AND ANR.

18.09.2025

Present : Sh. Shubhnit Gupta, Ld. Counsel for plaintiff.
Sh. Sanjeev Bhardwaj, Ld. Counsel for defendant.

Arguments on the application of the plaintiff under Section 151 CPC heard.

The plaintiff vide the said application prays for leading evidence in rebuttal and to examine the Record Keeper/Incharge from Western India Film Producers Association to confirm the fact whether M/s Shiva Entertainment and Art Film Production were proprietorship firm or partnership firm.

The application has been opposed mainly on the ground that though the photocopy of a document which suggest that the firms were proprietorship firm was relied upon by the plaintiff in his affidavit in evidence, but it was never tendered nor even the copy was marked and thus, he gave up the said document and now he cannot rely upon or prove the said document.

Ld. Counsel for the plaintiff submits that during the cross examination of the defendant, the said document was confronted with the fact regarding the status of the said firm to which the defendant deposed that he neither recollected the registration number nor the address of the said firm.

Ld. Counsel for the defendant further submits that since the plaintiff never closed his evidence in rebuttal, he cannot now lead further evidence in rebuttal.

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The purpose of trial is to bring the true facts on record. Ld. Counsel for the plaintiff has relied upon a judgment in ***Maharaj IS Wahi vs Renuka Wahi dated 30.08.16 CM (M) 842/16*** of the Hon'ble High Court of Delhi wherein the judgment in ***Subhash Chander vs Bhagwan Yadav 2010 I AD(Delhi 96)*** was relied upon and it was held there that *“the petitioner can prove the above document in rebuttal provided he has a right to lead rebuttal evidence. The court further held that it is only after defendant's evidence that plaintiff can decide whether there was necessity of leading evidence in rebuttal or not and at that stage, plaintiff can exercise his right of leading evidence in rebuttal. The court further held that failure to intimate that the plaintiff intends to lead rebuttal evidence when the plaintiff closed his evidence will not shut the plaintiff from leading such evidence.”*

It is thus, clear that even if the plaintiff has not closed his evidence in rebuttal, he can still lead evidence in rebuttal after closure of the evidence of the defendant.

As far as the objection of the Ld. Counsel for the defendant regarding reliance placed on the aforesaid document is concerned, it is a matter of record that the photocopy of the said document is on record and mentioned in the affidavit of the plaintiff though, it was not exhibited or marked when he tendered his affidavit. However, the fact remains that the defendant was cross-examined regarding the fact of the said document which means that the plaintiff had intention to prove the fact as stated in the said document and therefore, taking into consideration the above judgment, he cannot be denied to lead evidence in rebuttal. As already

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stated above, the purpose of trial is to bring true facts on record. Technicalities or bonafide mistake on part of a party cannot be a ground to deny him a right to prove a particular fact which the defendant was not able to answer for any reason whatsoever.

The application is accordingly allowed subject to cost of Rs.2,000/- and the witness mentioned therein be summoned for the next date on filing of PF and other particulars.

Put up for PE on **10.10.2025**.

(SANJAY SHARMA-I)
Principal District & Sessions Judge
Shahdara, KKD Delhi/18.09.2025