

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 22<sup>nd</sup> January, 2010  
Date of Order: 27<sup>th</sup> January , 2010

**CM(M) No. 718/2007**

%

**27.01.2010**

**Wazirpur Small Industries Association (Regd.)**

**... Petitioner**

Through: Mr. Sunil Malhotra, Advocate

Versus

**Union of India & Ors.**

**... Respondents**

Through: Ms. Saroj Bidawat &

Mr. Anil Gautam, Advocates for R-1

Mr. Harshit Aggarwal for Mr. Rajiv Bansal, Adv for DDA

Mr. Sunil Bagai, Advocate for R-3

**JUSTICE SHIV NARAYAN DHINGRA**

1. Whether reporters of local papers may be allowed to see the judgment? Yes.

2. To be referred to the reporter or not? Yes.

3. Whether judgment should be reported in Digest? Yes.

**JUDGMENT**

By this petition, the petitioner has assailed an order dated 28.2.2007 whereby the learned Sr. Civil Judge observed that the plaintiff (petitioner herein) had no right to lead evidence in rebuttal after the closure of evidence of defendant. In this case three issues were framed by the Trial Court; onus of proving two issues was on the defendant and one issue was to be proved by the plaintiff. The plaintiff examined its witnesses thereafter the defendants examined their witnesses and after examination of defendants' witnesses, the plaintiff sought leave to lead evidence in rebuttal in view of issues no. 1 & 2 framed in the case wherein onus was placed on the defendants to prove. Plaintiff's counsel drew attention of learned Sr. Civil Judge to Order 18 Rule 1, 2 & 3 CPC, the learned Sr. Civil Judge observed that Order 18 Rule 3 was not with regard to leading evidence but was only in regard to advancing final arguments by parties.

2. The Counsel for the respondent submitted that petitioner could have led evidence in rebuttal only if the petitioner had reserved its right to lead evidence in rebuttal after the petitioner had examined its witnesses finally. Since the petitioner, after closing its evidence had not reserved its rights to lead evidence in rebuttal, the petitioner cannot be allowed to examine evidence in rebuttal after defendants'

evidence. He relied upon Aranya Kumar Panda v. Chintamani Panda & Ors. AIR 1977 Orissa 87. In this judgment, the Orissa High Court after noting the provision under Order 18 Rule 3 CPC observed that in a case where burden of proving some of the issues lies on one of the parties, then in such cases, it is open to the party leading evidence, if he so chooses, to reserve his evidence by way of rebuttal to the evidence produced by the other party. It is also observed that law does not prescribe any particular stage at which the option is to be exercised. However, the Court had opinion that this option should be exercised at the outset and the provisions of Order 18 Rule 3 CPC are sufficiently complied with if the party leading evidence intimates the Court before the other party begins its evidence that it is reserving its right to adduce evidence in rebuttal on the other issues.

3. With due respect to the Single Judge of the Orissa High Court, I consider that where the burden of proving some issues is on the defendant and plaintiff has to start its case, the plaintiff starts leading evidence on the issues on which burden is on the plaintiff. The plaintiff, after closing his evidence on those issues, even if does not tell the Court that he was reserving his right to lead evidence in rebuttal, will have a right to lead evidence in rebuttal after the defendant had led evidence, on those issues where the onus of proving was on the defendant. The right of rebuttal is provided under Order 8 Rule 13 CPC and the Order does not specify that an option is to be given by the plaintiff after its evidence was over. This right has been given irrespective of exercise of the option at that stage. The Court cannot read what is not written in the Statute. The Statute is to be interpreted in a plain manner in which it lays down the law. It is only after defendant's evidence the 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.

4. I consider that the trial Court did not apply the provisions of Order 18 Rule 3 CPC correctly. The order of trial Court is set aside. The plaintiff will have right to lead evidence in rebuttal.

**January 27, 2010**  
vn

**SHIV NARAYAN DHINGRA, J.**