

CR No. 2006 of 2014 & CR No. 3364 of 2014 -1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH**

**CR No. 2006 of 2014 (O&M)
Date of Decision: 07.07.2015**

Sanjay

.....Petitioner

Vs.

Shakuntla Devi and others

.....Respondents

2. CR No. 3364 of 2014

M/s ATC India Tower Corporation Pvt. Ltd.

....Petitioner

vs.

Shakuntla Devi and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sarvjit Singh Khurana, Advocate,
for the petitioner. (in CR No. 2006 of 2014) and
for respondents No. 2 and 3 (in CR No. 3364 of 2014).

Mr. Gopal Sharma, Advocate,
for respondent No. 1. (in both cases).

Mr. Vishal Gupta, Advocate,
for the petitioner (in CR No. 3364 of 2014) and
for respondent No. 2 (in CR No. 2006 of 2014).

SABINA, J.

Vide this order above mentioned two petitions would be
disposed of as they have arisen out of the same order.

Petitioners/defendants by way of above two petitions have challenged the order dated 10.03.2014.

Learned counsel for the petitioners have submitted that the trial Court has erred in allowing the application moved by the plaintiff to examine witnesses in rebuttal. The witnesses now sought to be examined could have been examined by the plaintiff while leading her evidence in the affirmative as they relate to issue No. 2. Onus to prove issue No. 2 was on the plaintiff.

In support of his arguments, learned counsel has placed reliance on a decision of this Court in **Surjit Singh and others** vs. **Jagtar Singh and others** 2007 (1) RCR (Civil) 537, wherein it was held as under:-

“In our opinion, Order 18, Rule 3 of the CPC 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 CPC. 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 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)."

Learned counsel for respondent No. 1, on the other hand, has opposed the petitions and has submitted that the witnesses now sought to be examined were necessary for the just decision of the case. The plaintiff merely wanted to prove the documents on record which she had received by seeking information under the Right to information Act, 2005, after she had closed her evidence in the affirmative.

Respondent No. 1 has filed suit for permanent injunction and mandatory injunction.

On the pleadings of the parties, following issues were framed by the trial Court:-

"1. Whether the plaintiff is entitled to a decree for permanent injunction as prayed for in the plaint? OPP

2. Whether the plaintiff is entitled to a decree for mandatory injunction as prayed for in the plaint? OPP

3. Whether the present suit has been file on his conceived perception that the telecommunication tower over health hazard? OPD

4. Whether the plaintiff has not approached the Court with clean hands? OPD

5. *Whether the plaintiff has got no cause of action to file the present suit? OPD*

6. *Relief.”*

When the case was listed before the trial Court for recording of rebuttal evidence, plaintiff moved an application for permission to examine Dispatch Clerk, Municipal Council, Rewari and Record Keeper, Municipal Council, Rewari.

A perusal of the application (Annexure P-5) reveals that the said witnesses are sought to be examined by the plaintiff in order to prove issued No. 2. Onus to prove issue No. 2 was on the plaintiff. Thus, the plaintiff was required to prove issue No. 2 by leading her evidence in the affirmative. Plaintiff could not be permitted to lead evidence in rebuttal to prove issued No. 2 as she was required to prove issued No. 2 while leading her evidence in the affirmative.

Hence, the trial Court fell in error while allowing the application, moved by the petitioner for permission to examine the witnesses at the stage of rebuttal evidence to prove issued No. 2. Accordingly, these petitions are allowed. Impugned order dated 10.03.2014 is set aside.

**(SABINA)
JUDGE**

July 07, 2015
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