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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 13th November, 2019

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CM(M) 388/2019 & CM APPLs. 10685/2019, 10686/2019

M/S LOH VANIZYA UDYOG PVT LTD

..... Petitioner

Through: Mr. Rajesh Gupta, Mr. Harpreet Singh & Mr. Pranjal Saran, Advocates (M-9810087071)

versus

RICHIE KHOSLA & ORS

..... Respondents

Through: Mr. Puneet Saini, Advocate for R-1&2 (M-9654222460)

Ms. Asiya Khan, Advocate for R-3 (M-9971644936)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition has been filed challenging the impugned order dated 17th November, 2018 by which Respondent Nos.1&2/Plaintiffs (*hereinafter, "Plaintiffs"*) have been permitted to lead rebuttal evidence.

2. Various issues were framed in the suit for possession and *mesne profits* filed by the Plaintiffs. Two of the issues are as under:

"7) Whether the plaintiffs are entitled to seek mesne profits from the defendants, if yes, at what rate and for which period? OPP

8) Whether the plaintiffs are entitled to claim interest? If yes, at what rate and for which period? OPP"

3. In the above two issues, onus was on the Plaintiffs and the Plaintiffs have led their evidence. Thereafter, the Defendants led and concluded their evidence. At the stage of final hearing, the Plaintiffs moved an application under Order XVIII Rule 3 CPC seeking permission to lead rebuttal

evidence. The same was allowed by the impugned order dated 17th November, 2018 passed by the Id. Trial Court. The said order is challenged before this Court.

4. The submission of Mr. Rajesh Gupta, Id. counsel appearing for the Petitioner, is that by the impugned order, the Plaintiffs could not have been given a right to lead rebuttal evidence in respect of issues where the onus of proof was upon the Plaintiffs themselves. Only if the onus was on the Defendants and the Plaintiffs were made to commence the evidence, could the Plaintiffs have led rebuttal evidence. He relies upon two judgments i.e., the Division Bench judgment of the Punjab and Haryana High Court in *Surjit Singh and Ors. v. Jagtar Singh and Ors.*, AIR 2007 Punjab and Haryana 1 and the judgment of the Delhi High Court in *Suman Kapoor v. Rakesh Kumar 2015 (9) AD (Delhi) 29*.

5. On the other hand, Id. counsel appearing for the Respondents submits that he is not the Main Counsel in the matter. Accordingly, a pass-over was given in the morning to enable the Main Counsel to appear. However, Id. counsel for the Respondents submits that the paper-book was supplied only today and hence, again requests for an adjournment. A perusal of the order sheet shows that the present petition has been pending since 8th March, 2019 and the Id. counsel for the Respondents has appeared on two occasions. However, no grievance has been raised regarding a copy of the paper-book not being supplied, on either of the occasions. Since the suit is of 1987 vintage and the final hearing of the suit is held up, the request for adjournment is not acceded to.

6. On merits, the clear legal position under Order XVIII Rule 3 CPC is that when there are several issues which are framed in a suit, the onus

having been placed on one of the parties, if the other party is leading evidence first, the said party can reserve its right to only lead evidence in the affirmative in the beginning and can lead rebuttal evidence in respect of issues where the onus is not on the said party. This is also clarified in the two judgments relied upon by Mr. Gupta. In the decision of **Surjit Singh (supra)**, a Division Bench of the Punjab and Haryana High Court has given a categorical finding that if the onus of a particular issue is on the Plaintiff, the Plaintiff would not get a right of leading rebuttal evidence on such an issue. The relevant extract from **Surjit Singh (supra)** reads as under:

“32. 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)."

7. The legal position being extremely well-settled under Order XVIII Rule 3 CPC, even if the Plaintiffs had chosen to only lead evidence in the affirmative, in respect of Issues No.7 and 8 where onus was on them, they ought to have led their evidence in the first place itself. There was no question of leading evidence in rebuttal on an issue where the onus was on the Plaintiffs. Accordingly, the impugned order is contrary to law and is set-

aside. The matter shall proceed for final hearing and for final adjudication by the Id. Trial Court. Considering that this is a suit of 1987, it is directed that the Id. Trial Court shall adjudicate the matter finally within three months from 30th November, 2019.

8. Accordingly, the petition and all pending applications are disposed of. Let a copy of this order be sent to ADJ-02, Central, Tis Hazari Courts, Delhi in CS No. 14128/16 titled *Mr. Rickie Khosla v. M/s Loh Vanizya Udyog Pvt. Ltd.*

NOVEMBER 13, 2019

Rahul

**PRATHIBA M. SINGH
JUDGE**