

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

CR-299-2016 (O&M)

Date of decision : 08.08.2022

Billi Mahant

... Petitioner(s)

Versus

Roopa Mahant Chela Krishna Mahant

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sunil Agnihotri, Advocate for the petitioner.

Mr. Satbir Rathore, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

The present revision petition under Article 227 of the Constitution of India has been filed for setting aside the orders dated 13.02.2014 and 24.12.2015 whereby the Trial Court closed the evidence of the petitioner by order and further did not allow the petitioner to tender the affidavit of Billi Mahant as RPW1/A in rebuttal evidence.

The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for declaration to the effect that writing dated 25.10.2010 propounded by the defendant-respondent is illegal, null and void and ineffective qua the rights of the plaintiff-petitioner.

On the basis of the pleadings, the following issues were framed by the Trial Court :

1. Whether the plaintiff is entitled to the declaration as prayed for ? OPP
2. Whether the plaintiff is entitled to the permanent injunction as prayed for ? OPP

3. Whether the defendant is entitled to permanent injunction as prayed for in counter claim ? OPD
4. Relief.

The evidence of the plaintiff-petitioner was closed by order on 13.02.2014. An affidavit of the plaintiff-petitioner had earlier been filed as PW-1/A while leading the evidence in affirmative.

The defendant-respondent led his evidence on issue No.3, the onus of which was on the defendant-respondent. In rebuttal, the plaintiff-petitioner sought to place on record an affidavit (RPW1/A). An application was filed by the defendant-respondent for striking off the affidavit (RPW1/A) inasmuch as the plaintiff-petitioner had not reserved his right to lead rebuttal evidence. In reply, the stand taken by the plaintiff-petitioner was that the evidence was led by the defendant-respondent on the counter-claim and hence the plaintiff-petitioner had a right to lead the evidence in rebuttal. Vide the impugned order dated 24.12.2015, the application for striking off the affidavit (RPW1/A) was allowed.

Learned counsel for the plaintiff-petitioner would contend that since the counter-claim had been filed by the defendant-respondent, hence, the plaintiff-petitioner had a right to lead evidence in rebuttal and even so without reserving his right to lead evidence in rebuttal. In support of his contentions, reliance has been placed upon the judgment of this Court in **Naranjan Singh Vs. Ajaib Singh & Anr. [2006 (1) PLR 789]**.

Per contra, learned counsel for the defendant-respondent has contended that without reserving his right to lead evidence in rebuttal, the

plaintiff-petitioner could not have been permitted to file the affidavit. It is further the contention of learned counsel for the defendant-respondent that the affidavit now sought to be led in evidence is verbatim the same as the affidavit filed by the petitioner in evidence in affirmative. It is further contended that the contents of the affidavit make it very clear that the evidence now sought to be led is the evidence that he had also led in affirmative and hence the same cannot be allowed in rebuttal. In support of his contentions, learned counsel has relied upon Division Bench judgments in **Surjit Singh & Ors. vs. Jagtar Singh & Ors. [2007 (1) RCR (Civil) 537]** and **Avtar Singh & Anr. vs. Baldev Singh & Ors. [2015 (5) RCR (Civil) 625]**. It is further the contention of learned counsel for the defendant-respondent that in the case of **Naranjan Singh** (*supra*), separate set of issues had been framed by the Trial Court qua the suit filed by the plaintiff therein and qua the counter-claim filed by the defendant therein whereas in the present case no such separate issues were framed.

Heard.

In the present case, on the basis of the pleadings of the parties, issues were framed on 31.10.2011. A perusal of the issues, as reproduced above, reveals that no separate issues were framed in the counter-claim. The onus of issue Nos.1 and 2 was on the plaintiff-petitioner and that of issue No.3 was on the defendant-respondent. The plaintiff-petitioner filed his affidavit while leading his evidence in affirmative, which was taken on the record and he was cross-examined also. The evidence of the plaintiff-petitioner was closed by order on 13.02.2014. The plaintiff-petitioner did not

reserve his right to lead evidence in rebuttal. After the defendants had completed their evidence, the plaintiff-petitioner sought to file another affidavit reiterating the contents of the affidavit filed by the plaintiff-petitioner while leading his evidence in affirmative. An objection was raised by the defendant-respondent that the contents of the affidavit were identical and hence the same could not be permitted to be led in rebuttal evidence inasmuch as the evidence which is to be led in the affirmative cannot be permitted to be led in rebuttal.

It is trite that the plaintiff-petitioner cannot lead evidence in rebuttal as a matter of right on an issue the onus of which is on the defendant-respondent. The plaintiff has to reserve his right to lead evidence in rebuttal on such an issue the onus of which is on the defendant-respondent. In the present case, admittedly, the plaintiff-petitioner did not reserve the right when the evidence was closed by order. In **Surjit Singh's** case (*supra*) it has been held as under :

“15. In our opinion, Order 18 Rule 3 of the Civil Procedure Code 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 Civil Procedure Code. 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 M/s 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)."

In Avtar Singh's case (supra) it was inter-alia held that :

"Provisions of Order 18 Rule 2(3) cannot be construed or constructed to mean that after defendant had rendered his response to the whole case, plaintiff could

still have a right to lead evidence in rebuttal. Such an interpretation or construction of the provision would be distorting the provision beyond its content. This perception and understanding further finds complete resonance in the provision of Order 18 Rule 3 CPC, as only the said provision deals with a situation where there are several issues and the burden of proof some of which lies upon the defendant.”

In the present case, no separate issues were framed qua the counter-claim and hence the judgment relied upon by learned counsel for the plaintiff-petitioner in the case of **Naranjan Singh** (*supra*) would have no applicability in the present case.

In view of the above, I do not find any illegality or infirmity in the impugned orders passed by the Trial Court. The present revision petition is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

08.08.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO