



231

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

**CR-1141-2024 (O & M)**

**Reserved on : 24.05.2024**

**Date of Decision : 31.05.2024**

Dinesh Kumar

.....Petitioner(s)

VERSUS

Gyatari Devi and Others

.....Respondent(s)

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Vishal Gupta, Advocate for the petitioner.

Mr. Rakesh Gupta, Advocate for respondent Nos.1 to 5.

**ALKA SARIN, J.**

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 23.01.2024 passed by the Trial Court allowing the application filed by the plaintiff-respondent Nos.1 to 5 to lead evidence in rebuttal, as also to the order dated 06.02.2024 whereby time has been given for filing a reply to the application for summoning of the Election Kanungo in rebuttal evidence.

2. Since vide the order dated 06.02.2024 only the case has been adjourned for reply to the application, this Court does not deem it appropriate to interfere in the same. Hence, the present revision petition as far as the challenge to the order dated 06.02.2024 is concerned, is dismissed.

3. Qua the challenge to the order dated 23.01.2024 whereby the plaintiff-respondent Nos.1 to 5 have been permitted to lead evidence in rebuttal, before adverting to the merits of the case, few facts need to be

noted. The plaintiff-respondent Nos.1 to 5 herein filed a suit for mandatory injunction for directing the defendant No.1-petitioner to hand over vacant and peaceful possession of the house bearing No.304 situated in Sector 19 Block B, Preet Nagar, Mandi Gobindgarh, Tehsil Amloh, District Fatehgarh Sahib to the plaintiff-respondent Nos.1 and 2 and for recovery of damages for use and occupation of their house by the defendant No.1-petitioner w.e.f. 01.06.2011 to 22.01.2013. The suit was contested by the defendants (petitioner and proforma respondent Nos.6 and 7 herein) on the ground that the house was taken on rent by the defendant No.1-petitioner from the defendant Nos.2 and 3 (respondent Nos.6 and 7 herein) @ Rs.600/- per month. It was further the stand taken that the defendant Nos.2 and 3 (respondent Nos.6 and 7 herein) had been issuing receipts to the defendant No.1-petitioner. Thereafter, the defendant Nos.2 and 3 (respondent Nos.6 and 7 herein) sold the house to the plaintiff-respondent Nos.1 and 2 who stepped into the shoes of the defendant Nos.2 and 3 (respondent Nos.6 and 7 herein) and became the landlord of the defendant No.1-petitioner herein. It was further the stand taken that the defendant No.1-petitioner continued to make the payment of rent from June 2006 to the plaintiff-respondent Nos.1 and 2 and they received the same. However, from June 2011 they refused to receive the rent. It was further the stand taken that the defendant No.1-petitioner is in peaceful possession as a tenant and is living in the said house with his family. On the basis of the pleadings, the followings were framed :

- i. Whether the plaintiff is entitled to relief of mandatory injunction as claimed ? OPP
- ii. Whether the suit of plaintiffs are entitled to recover the amount as prayed for ? OPP

- iii. Whether the suit is not maintainable ? OPD
- iv. Whether the plaintiffs have not come to the court with clean hands and have suppressed the material facts from the court, is so, it effect ? OPD
- v. Whether the plaintiffs have no cause of action and locus standi to file the present suit ? OPD
- vi. Whether the plaintiffs are stopped by his own act and conduct from filing the present suit ? OPD
- vii. Whether suit is malafide one ? OPD
- viii. Whether this court has no jurisdiction to try the suit? OPD
- ix. Relief.

After framing of the issues, evidence of the plaintiff-respondent Nos.1 to 5 was led and vide order dated 08.05.2018 evidence of the plaintiff-respondent Nos.1 to 5 was closed in the affirmative. An application was also filed by the plaintiff-respondent Nos.1 to 5 for leading secondary evidence which was dismissed by the Trial Court vide order dated 11.07.2017 which was eventually allowed by this Court vide order dated 20.04.2023 passed in CR-2306-2018. Thereafter, the defendants (petitioner and proforma respondent Nos.6 and 7 herein) led their evidence. After the defendants (petitioner and proforma respondent Nos.6 and 7 herein) had closed their evidence, an application was filed by the plaintiff-respondent Nos.1 to 5. When the matter was listed for hearing on an application filed by the plaintiff-respondent Nos.1 to 5 for directing the defendant No.1-petitioner herein for production of his Aadhaar Card, Driving License, Voter Card, Ration Card prior to 2005, record of property tax and record of sewerage

charges paid by him after June 2008 the copies were provided by the defendant No.1-petitioner and the said application was disposed off as having been rendered infructuous. Simultaneously, an affidavit of Madan Lal Gupta was sought to be placed on the record by the plaintiff-respondent Nos.1 to 5 seeking permission to examine him in rebuttal evidence. The defendant No.1-petitioner herein strongly objected to such examination on the ground that the said witness ought to have been examined in the affirmative and could not be examined in rebuttal. Vide the impugned order dated 23.01.2024 the plaintiff-respondent Nos.1 to 5 were allowed to examine Madan Lal Gupta in rebuttal evidence. Hence, the present revision petition.

4. Learned counsel for the defendant No.1-petitioner would contend that the plaintiff-respondent Nos.1 to 5 herein had come to the Court on the ground that the defendant No.1-petitioner herein was a licensee and since his license stood revoked, the suit was filed for mandatory injunction. The suit was specifically contested by the defendants (petitioner and proforma respondent Nos.6 and 7 herein) on the ground that the defendant No.1-petitioner was a tenant in the suit property. That being so, any evidence in order to show that the defendant No.1-petitioner was in possession of the suit property as a licensee was to be led in the affirmative. In support of his contentions the learned counsel has relied upon the judgment of a Division Bench of this Court in the case of **Surjit Singh & Ors. Vs. Jagtar Singh & Ors. [2007 (1) RCR (Civil) 537]**.

5. *Per contra*, the learned counsel for the plaintiff-respondent Nos.1 to 5 would contend that the plaintiff-respondent Nos.1 to 5 had closed their evidence in the affirmative and the rebuttal evidence is to be led on

issue No.4 i.e. “*Whether the plaintiffs have not come to the court with clean hands and have suppressed the material facts from the court, is so, its effect ? OPD*”. In support of his contentions, he has relied upon the judgment of this Court in the case of **Jai Narain Vs. Satya Narain & Ors. [2007 (30) RCR (Civil) 585]** to contend that the plaintiffs should be allowed to lead rebuttal evidence on the issues onus of which was on the defendants as the plaintiffs cannot presuppose the evidence which is to be led by the defendants on the issues. Further reliance has been placed upon the judgment of this Court in the case of **Kanwaljit Kaur Bedi Vs. Paramjit Singh Sawhney & Ors. [2020 (1) RCR (Civil) 521]**.

6. I have heard the learned counsel for the parties.

7. In the present matter a specific case was set up by the plaintiff-respondent Nos.1 to 5 was that the defendant No.1-petitioner was a licensee and that the license stood revoked in 2011. The categorical stand taken by the defendant No.1-petitioner was that he was a tenant in the premises. Issue No.1 as framed by the Trial Court reads as under :

*Whether the plaintiff is entitled to relief of mandatory injunction as claimed ? OPP*

8. The plaintiff-respondent Nos.1 to 5 were to lead evidence in the affirmative to show that the defendant No.1-petitioner was a licensee in the property as the onus of issue No.1 was cast upon the plaintiff-respondent Nos.1 to 5. The evidence, if any, regarding the status of the defendant No.1-petitioner viz-a-viz the suit property had to be led in the affirmative by the plaintiff-respondent Nos.1 to 5. The affidavit of Madan Lal Gupta now sought to be tendered in rebuttal is also qua the status of the defendant No.1-

petitioner viz-a-viz the suit property. The Division Bench of this Court in the case of **Surjit Singh** (supra) has 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).”*

9. The judgment relied upon by the learned counsel for the plaintiff-respondent Nos.1 to 5 in the case of **Jai Narain** (supra) would not come to his aid as the onus of issue on which the plaintiff-respondent Nos.1 to 5 have now filed the affidavit of Madan Lal Gupta was cast upon the plaintiff-respondent Nos.1 to 5 themselves. In view of the Division Bench’s judgment of this Court in the case of **Surjit Singh** (supra), the plaintiff-respondent Nos.1 to 5 cannot be permitted to lead evidence in rebuttal.

10. Similarly, the judgment of this Court in the case of **Smt. Kanwaljit Kaur Bedi** (supra) would also not come to the aid of the plaintiff-respondent Nos.1 to 5 inasmuch as there also the rebuttal evidence

was to be led qua an issue onus of which was on the defendants. The learned counsel for the plaintiff-respondent Nos.1 to 5 has not been able to convince this Court that evidence now sought to be led by him in rebuttal by way of affidavit of Madan Lal Gupta pertained to issue No.4.

11. In view of the law laid down by the Division Bench of this Court in the case of **Surjit Singh** (supra), the impugned order dated 23.01.2024 is not sustainable in law and accordingly is set aside. The present revision petition is allowed. Pending applications, if any, also stand disposed off.

31.05.2024  
Yogesh Sharma

(**ALKA SARIN**)  
**JUDGE**

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