



CR No.6294-2024

(1)

In the High Court of Punjab and Haryana at Chandigarh

[127]

CR No.6294-2024**Date of Decision: 28.10.2024**

RASHPAL SINGH

..... PETITIONER

VERSUS

NARINDER SINGH @ NINDHI AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Aruz Khan, Advocate for the petitioner.

ALOK JAIN, J. (ORAL)

1. The present revision petition has been filed for setting aside the order dated 29.08.2024 passed by the Ld. Civil Judge (Jr. Divn.), Ludhiana, whereby, the application filed by the petitioner/plaintiff under Order 18 Rule 3 read with Section 151 of the Code of Civil Procedure, 1908 for tendering certified copies of the documents recieved under RTI and original newspapers, known as Rozana Ajit and Dainik Jagran dated 01.10.2015 in rebuttal evidence by examining the concerned witnesses to prove the same, has been dismissed.

2. Learned counsel for the petitioner submits that the Lower Appellate Court fell in error in dismissing the application, as the petitioner would always have a right to tender into evidence and seek the rebuttal by way of any additional documents. The counsel for the petitioner further submits that since the matter is at the fag end, but reiterate that the abovesaid documents would be instrumental in the fair adjudication of the suit filed by the petitioner. To support the arguments, the counsel for the petitioner relies upon the judgment of the Division Bench of this Court in the case of **"Surjit Singh and others Vs. Jagtar Singh and others"** passed in C.R. No.1213 of 2005, and to substantiate his arguments, relied upon the relevant paragraph No.15 of the said judgment, which is reads 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 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 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 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 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).”

3. He also relies upon a Division Bench judgment of this Court in the case of **“Avtar Singh and another Vs. Baldev Singh and others”** passed in C.R. No.2203 of 2010, to substantiate his arguments that it is mandatory for the trial Court to have provide an opportunity to the petitioner/plaintiff to lead rebuttal evidence.

4. Heard learned counsel for the petitioner at length and it would be imperative to reproduce the order 18 Rule 3 of the Code of Civil Procedure, 1908, at this stage, which reads as under:-

“3. Evidence where several issues.

Where there are several issues, the burden of proving some of which lies on the party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.”

5. A perusal of the above, clearly demonstrates that the rebuttal evidence can only be brought in on the issues where the burden of proof would be on the opposite side. In the present case, learned counsel for the petitioner has not been able to demonstrate that the issue for which the petitioner wants to bring in the evidence, the onus to proof of that issue lies on the defendant. Moreso, the petitioner/plaintiff did not reserve his right while cloing his evidence in affirmative. The application is absolutely vague and nothing coming forth, as to whether the petitioner/plaintiff had called upon any

evidence from the Municipal Corporation to substantiate his claim. Therefore,



on the issue for which, the onus lies upon the plaintiff/petitioner cannot be permitted to substantiate by additional evidence by taking the handle of Order 18 Rule 3.

6. The issues were framed in the year 2019 and plaintiff/petitioner closed his evidence after four long years i.e. on 29.08.2023 and, subsequently, defendants' evidence has also stand closed on 11.01.2024. Another fact which needs to be highlighted is that the application does not disclose, as to which witness has to be examined or summoned, for proving the said documents, and the application seems only to prolongate the trial.

7. The evidence now sought to be placed on record was already in existence at the time of the plaintiff evidence and there was nothing new which is sought to be brought in, as counter/rebuttal to the evidence of the defendants, for which the petitioner could be granted the liberty to produce additional evidence as stated above.

8. As regards, the judgments relied upon by the learned counsel for the petitioner, firstly, the judgment in the case of Surjit Singh(supra) would not come to the rescue of petitioner for the reason that the petitioner did not reserve his right for leading evidence in rebuttal and in the absence of the same, he relied upon another judgment titled as Avtar Singh(supra), the same would also be of no help, as it is not the case that the plaintiff has not been given an opportunity to lead rebuttal evidence. It is a settled principle of law that once the plaintiff failed to demonstrate that the rebuttal evidence sought to be brought, is in response of the evidence brought in by the defendants on the issue, wherein the onus to prove the said issue was on the defendants. The plaintiff, later cannot be permitted to bring the same, except in circumstance when the evidence is crucial to such an extent that it clinch the entire issue.



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9. In view of the above, the present revision petition being devoid of any matter, is hereby dismissed.

(ALOK JAIN)
JUDGE

October 28, 2024

Anjal

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No