

**CR-6189-2014 (O&M)****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****104****CR-6189-2014 (O&M)**

Date of Decision:24.02.2025

**SHRIMONI GURUDWARA
PABANDHAK COMMITTEE****... Petitioner****V/S****JARNAIL SINGH AND ORS****.... Respondents****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present: Mr. Sandeep Bansal, Advocate for the petitioner.

Mr. Naveen Batra, Advocate for the respondents.

*********SUVIR SEHGAL, J. (ORAL)**

1. Challenge in the instant revision petition filed under Article 227 of the Constitution of India is to order dated 08.08.2014, Annexure P-3, passed on an application filed by the petitioner-defendant for expunging the rebuttal evidence led by the respondents-plaintiffs, has been declined.

2. Mr. Sandeep Bansal, counsel for the petitioner has argued that after having closed their evidence in the affirmative, plaintiffs cannot be permitted to produce witnesses in the garb of rebuttal evidence. He asserts that the plaintiffs can be permitted to lead evidence in rebuttal only on the issues in which the burden of proof is on the defendant, unless the plaintiffs specifically reserved their right to do so. He has placed reliance upon the Division Bench judgments of this Court in:



(i) *Surjit Singh and others Versus Jagtar Singh and others, 2007(1) PLR 552.*

(ii) *Jagdev Singh and others Versus Darshan Singh and others, 2007(1) RCR (Civil) 794;* and

(iii) *Avtar Singh and another Versus Baldev Singh and others, 2015(1) PLR 230*

3. On the other hand, Mr. Naveen Batra, counsel for the respondents, while supporting the impugned order has contended that the evidence being produced by the respondents-plaintiffs is vital for the just decision of the suit and the respondents had made its foundation in the witnesses already produced by them.

4. I have considered the submissions made by counsel for the parties besides examining the paper book with their able assistance.

5. Respondents-plaintiffs filed a suit, Annexure P-4, for declaration to the effect that they are lessees in the suit land upon payment of 1/3rd share of produce and eviction order passed under the Punjab Religious Premises and Land (Eviction and Rent Recovery), Act, 1997, is illegal and unenforceable. They also sought consequential relief of permanent injunction restraining the defendants from dispossessing them in execution of the eviction order. Suit is being contested by the petitioner-defendant by filing a written statement and on the basis of the pleadings of the parties, trial Court framed the following issues:-

“1. Whether the plaintiffs are the lessee of the land as detailed and described in the head note of the plaint? OPP.

2. Whether order dated 20.05.2008 is illegal, null



and void?OPP.

3. *Whether the plaintiff is entitled to permanent injunction as prayed for?OPP.*

4. *Whether the suit of the plaintiff is not maintainable in the present form?OPD.*

5. *Whether the Civil Court has got no jurisdiction to try the present suit under the Punjab Religious Premises and Land (Eviction and Recovery Act) 1977 ?OPD.*

6. *Whether plaintiffs have got no locus standi to file the present suit?OPD.*

7. *Relief.”*

6. After examining Tarlok Singh, PW-1, plaintiffs closed their evidence and the trial Court passed the following order on 09.12.2013:-

“I close the evidence of the Plaintiff in affirmative.”

Sd/- CJ(JD), 09.12.2013.”

7. Defendants concluded their evidence on 27.05.2014 and the proceedings were fixed for rebuttal evidence. On 30.05.2014, the plaintiff furnished a list of witnesses for examination in rebuttal evidence. On deposit of requisite charges, some witnesses were examined, when the petitioner-defendant filed an application, Annexure P-1 for expunging of the rebuttal evidence which has been declined vide order under challenge herein.

8. A perusal of the issues framed by the trial Court shows that the onus of first three issues is on the plaintiff and the remaining three issues which pertain to the maintainability of the suit, jurisdiction of the Court and *locus standi* are to be established by the defendants. Plaintiffs examined one witness and closed their evidence in the affirmative. In



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other words, they did not reserve any right to lead any evidence in rebuttal.

9. Interpreting Order 18 Rule 3 CPC, a Division Bench of this Court in **Surjit Singh's** case (supra) has held as under:-

*“21. 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 v. Devinder Singh, AIR 1983 Punjab & Haryana 210**. 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 V. Bachan Kaur, 2000(2)***



RCR (Civil) 133, 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.”

10. Following the above judgment, another Division Bench of this Court in Jagdev Singh's case (supra) held that the plaintiff, cannot as a matter of right lead evidence in rebuttal on issues, the onus of proof of which is upon him. Another Division bench in Avtar Singh's case (supra) held that the plaintiff has the option to lead his entire evidence on all the issues and in case, he intends to lead rebuttal evidence or answer the evidence that is to be led by the defendant, as regards the issues, the onus of which is upon the defendant, he shall have to reserve his right. It has been clarified that the plaintiff shall have to exercise his option either when he closes his evidence in affirmative or in any case before the other party begins its evidence. If he fails to reserve any such right, in terms of a provision of Order 18 Rule 3 CPC, his right to lead evidence in rebuttal would stand forfeited.

11. Adverting to the facts of the present case, it is apparent that the plaintiffs closed their evidence in affirmative on 09.12.2013. They did not reserve any right to lead evidence in rebuttal nor such a right has been exercised by them at any time before the defendants led their



evidence. Plaintiffs therefore, do not have a right to lead evidence in rebuttal and the trial Court has clearly erred in granting opportunity to them to lead rebuttal evidence. This has resulted in prejudice to the petitioner-defendant. Impugned order being perverse cannot be sustained.

12. Accordingly, revision petition is allowed. Impugned order dated 08.08.2014, Annexure P-3 is set aside. The evidence led by the plaintiffs in rebuttal is ordered to be expunged and will not be taken into consideration at the time of adjudication of the suit on merits.

13. Noticing that the civil suit is of the year, 2011 and has remained pending for the last 14 years, trial Court shall make an endeavour and conclude the proceedings as expeditiously as possible preferably within a period of two months from the date of receiving a copy of this order.

24.02.2025
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No