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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision:21.05.2025

RAJINDER PAL

...PETITIONER

VS.

BAL KRISHAN (NOW DECEASED) THROUGH LRS AND ORS.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Ms. Shivya Sehgal, Advocate
for the petitioner.

Mr. Rahul Rampal, Advocate
for respondents No.1 (i) to (iv).

**Service upon respondents No.2 and 3 was ordered to be
dispensed with by this Court vide order dated 10.03.2025.**

SUVIR SEHGAL, J.

1. Aggrieved of order dated 18.07.2023, Annexure P-7, passed by the learned Civil Judge (Senior Division), Ludhiana, whereby an application, Annexure P-5, for permission to adduce rebuttal evidence, has been declined, petitioner/plaintiff has approached this Court by way of instant revision petition.

2. Ms. Shivya Sehgal, counsel for the petitioner submits that a suit under Section 6 of the Specific Relief Act, 1963 (for short "1963 Act") has been filed by the petitioner for possession of a plot and upon being served, it is contested by the defendants. Counsel asserts that after both the parties



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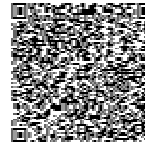
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concluded their evidence, plaintiff filed an application on 24.05.2023, Annexure P-5, to produce evidence in rebuttal on issues the onus of which was on the defendants. While making a reference to the application, Annexure P-5, she states that the plaintiff intends to produce four witnesses and record of the previous litigation between the parties. She contends that the Trial Court has erred in denying the right to lead rebuttal evidence as onus of proving some issues was on the defendants. She has placed reliance upon Surjit Singh and others Vs. Jagtar Singh and others 2007 (1) RCR (Civil) 537; Avtar Singh and another Vs. Baldev Singh and others 2015 (5) RCR (Civil) 625 and Jai Narain Vs. Satya Narain and others 2007 (30) RCR (Civil) 585.

3. Per Contra, Mr. Rahul Rampal, counsel for respondents No.1(i) to (iv) has supported the impugned order and has urged that after closure of the evidence in affirmative, plaintiff cannot be permitted to produce evidence in rebuttal. He has placed reliance upon a judgment of this Court in Paramjit Kaur Vs. Pritam Kaur and others (CR-280-2021 decided on 25.02.2025).

4. I have heard counsel for the parties and considered their respective submission besides examining the documents appended with the paper-book.

5. Suit, Annexure P-1, under Section 6 of the 1963 Act filed by the plaintiff is being contested by defendant No.1 by filing a written statement, Annexure P-2, on various grounds including questioning the maintainability of the suit as well as on the ground that the plaintiff has not approached the Court with clean hands. Following issues have been framed



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by the Trial Court on 09.08.2017, Annexure P-4, on the basis of the pleadings of the parties:-

“1. Whether the plaintiff is entitled for possession under section 6 of Specific Relief Act as prayed for?OPP.

2. Whether the plaintiff entitled for Permanent Injunction as prayed for?OPP

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

4. Whether the plaintiff has concealed the material facts from this court and has not come with the court in clean hands?OPD

5. Whether the suit of the plaintiff is barred by way of principle of resjudicata under section 11 of Civil Procedure Code?OPD

6. Whether the plaintiff has no locus standi to file the present suit?OPD

7. Whether the suit of the plaintiff is also bad for mis-joinder of necessary parties? OPD

8. Relief.”

6. Plaintiff examined witnesses as well as produced documents in support of his case and on 21.02.2019, he closed his evidence. Trial Court passed the following order:-

“Rajinder Pal VS Bal Krishan etc.

Present: Sh. R.P. Grover, Advocate for the plaintiff.



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Sh. B.K. Rampal, Advocate for the defendant No.1.

Defendant No.3 stated to be died and defendant No.2 is the co.

Vide a separate statement, plaintiff has closed his evidence in affirmative. Now case stands adjourned to 12 03.2019 for defendant evidence, PF/DM and list of witnesses be deposited within 5 days.

Dated: 21.02.2019

(Jaswinder Pal)

Civil Judge (Sr. Division)

Ludhiana”

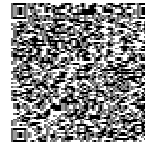
7. After the defendants concluded their evidence, plaintiff filed an application, Annexure P-5, for seeking permission to produce some witnesses in the shape of rebuttal evidence, which after contest has been declined vide order under challenge herein.

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

“21. 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

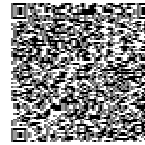


his evidence on these issues or reserve it by way of answer to the evidence produced by the other parties". No matter how liberally a provision in the statute is required to be interpreted, by interpretation it cannot be amended. Whilst construing a statutory provision the Court cannot reconstruct it. 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 Mrs. 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 Mrs. Jaswant Kaur (supra) and R.N. Mittal, J. in National Fertilizers Ltd. (supra). The reference is answered accordingly. Let the Civil Revision be placed before the Single Judge for decision of the same on merits."

9. Another Division Bench of this Court in Jagdev Singh and others Versus Darshan Singh and others, 2007 (1) R.C.R. (Civil) 794 has



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held that plaintiff cannot as a matter of right lead evidence in rebuttal on issues, the onus of which is upon him. Yet another Division Bench in **Avtar Singh's case (supra)** has held that the plaintiff has an option to lead his entire evidence on all issues, and in case, he intends to lead rebuttal evidence or answer evidence that is to be led by the defendant, as regards issues 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 such right, in terms of the provision of Order 18 Rule 3, CPC, his right to lead evidence in rebuttal would stand forfeited. The legal position has been authoritatively settled by three different Division Benches, which has been followed in **Paramjit Kaur's case (supra)**.

10. Adverting to the facts of the present case, it is evident that the plaintiff closed his evidence in affirmative on 21.02.2019. He did not reserve any right to lead evidence in rebuttal nor such a right has been exercised by him at any time before the defendant led his evidence, even though onus of some issues was on the defendants. Plaintiff, therefore, does not have any right to lead evidence in rebuttal and the trial Court has not committed any error while declining the application, vide order Annexure P-5. In **Jai Narain's case (supra)**, while closing his evidence in affirmative, plaintiff reserved his right to lead evidence in rebuttal on two issues. However, in the instant case, such a right has not been reserved.

11. Judgments relied upon by counsel for the petitioner do not support the case of the plaintiff rather the legal position, as noticed above, is



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in favour of the defendant. Impugned order does not suffer from any irregularity or illegality.

12. Petition sans merit and is dismissed, though with no order as to costs.

21.05.2025
sheetal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No