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

CR-6627-2024 (O&M)

Date of Decision : 26.09.2025

PREM CHAND GUPTA

... Petitioner

VERSUS

SUKHLEEN SINGH DHILLON & ANR

... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sushil Saini, Advocate for the petitioner.

Mr. Birinder Pal, Advocate for respondent No.1.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 16.10.2024 (Annexure P-1) passed by the learned Civil Judge (Junior Division), S.A.S. Nagar (Mohali) whereby the application (Annexure P-2) filed by the plaintiff-respondent No.1 herein for summoning two witnesses after closing of the evidence of the defendant No.1-appellant herein was allowed.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 herein filed a suit for declaration that the cancellation of agreement to sell dated 27.12.2019 was illegal, null and void and unilateral and does not affect the rights of the plaintiff-respondent No.1 herein as also for possession by way of specific performance of the agreement to sell dated 27.12.2019. Vide order dated 20.12.2022, after completion of the pleadings, the following issues were framed :

1. Whether the plaintiff is entitled for declaration as prayed for ? OPP
 2. Whether the plaintiff is entitled for possession by way of specific performance of agreement to sell dated 27.12.2019 as prayed for ? OPP
 3. Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP
 4. Whether the suit of plaintiff is not maintainable ?
OPD
 5. Whether the plaintiff has not come to this Court with clean hands and has suppressed the true material facts from the Court ? OPD
 6. Whether the plaintiff has no cause of action to file the suit ? OPD
 7. Whether the plaintiff has no *locus standi* to file the present suit ? OPD
 8. Whether the present suit has not been properly valued for the purpose of Court fee ? OPD
 9. Whether the present suit is time barred ? OPD
 10. Relief.
3. After the defendant No.1-petitioner herein had closed his evidence, an application (Annexure P-2) was filed by the plaintiff-respondent No.1 for summoning two witnesses. The application simply stated that in order to clarify the events, it was necessary to examine Sohail Bhasin and the

Clerk concerned from Indian Bank. Reply was filed to the said application. Vide the impugned order dated 16.10.2024 the said application was allowed on the ground that the testimony of the said witnesses was likely to aid in the determination of real controversy between the parties and that the delay caused could be compensated by way of costs. It was further held that the defendants would have the right to cross-examine the said witnesses. Aggrieved by the order dated 16.10.2024 the present revision petition has been filed by defendant No.1-petitioner herein.

4. Learned counsel for defendant No.1-petitioner herein would contend that the two witnesses sought to be produced vide the application (Annexure P-2) are for leading evidence qua issue No.2 the onus of which was cast upon plaintiff-respondent No.1 herein hence no evidence could have been permitted in rebuttal.

5. *Per contra*, learned counsel for the plaintiff-respondent No.1 has contended that the application has been allowed treating it to be the one for additional evidence hence no fault can be found with the impugned order dated 16.10.2024.

6. Heard.

7. In the present case, admittedly, the witnesses summoned vide the application (Annexure P-2) were to prove the agreement to sell dated 27.12.2019. Issue No.2 reads as under :

'2. Whether the plaintiff is entitled for possession by way of specific performance of agreement to sell dated 27.12.2019 as prayed for ? OPP'

The onus of the said issue was cast upon the plaintiff-respondent No.1 herein. Once the plaintiff-respondent No.1 had led his evidence and the evidence of defendant No.1-petitioner herein had been closed, the application for summoning two witnesses was filed. The application is bereft of any reasoning except for stating that the said witnesses were required to be summoned in rebuttal evidence. It is trite that a party cannot be allowed to lead evidence in rebuttal on an issue the onus of which is cast upon the said party. In the present case since the onus of issue No.2 was cast upon the plaintiff-respondent No.1, the plaintiff-respondent No.1 possibly cannot have led evidence in rebuttal on the said issue.

8. A Division Bench in the case of **Surjit Singh & Ors. V/s Jagtar Singh & Ors. [2007 (1) RCR (Civil) 537]** 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).”

Further, in the case of **Avtar Singh and Anr. V/s Baldev Singh & Ors. [2015 (5) RCR (Civil) 625]** it was held as under :

“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 view of the settled law, the plaintiff-respondent No.1 possibly cannot be permitted to lead evidence in rebuttal on an issue the onus of which was cast upon him.

9. Learned counsel for the plaintiff-respondent No.1 has argued that the application (Annexure P-2) has been treated as an application for additional evidence. The said argument deserves to be rejected as there is no averment in the application that the same was for additional evidence. The requirements for leading additional evidence are totally different and till such time a proper application is filed, and cogent reasons are stated therein for not leading the evidence earlier, the additional evidence cannot be allowed. In any case a Court cannot travel beyond the pleadings of the parties. In the present case in the application (Annexure P-2) it has specifically been stated that the evidence was being sought to be led in rebuttal and as such the application could not have possibly be treated as an application for additional evidence.

10. In view thereof, the impugned order dated 16.10.2024 cannot be sustained and the same is accordingly set aside. The application (Annexure P-2) filed by the plaintiff-respondent No.1 herein for summoning two witnesses stands rejected. The evidence of the two witnesses, in case recorded, would be treated as struck off.

11. The revision petition stands disposed off accordingly. Pending applications, if any, also stand disposed off.

12. Needless to say, any observation made herein shall not be treated as an expression of opinion on the merits of the case.

26.09.2025

Aman Jain

(ALKA SARIN)

JUDGE

*NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*