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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision:25.02.2025

PARAMJIT KAUR

...PETITIONER

VS.

PRITAM KAUR AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

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

Mr. Saurav Kanojia, Advocate for
Mr. Lakshay Bector, Advocate
for respondent no.1.

SUVIR SEHGAL, J.

1. This revision petition has been filed assailing order dated 06.02.2020, passed by the Family Court, Ludhiana, whereby an application, Annexure P-4, filed by the petitioner/defendant No.4 for striking out the affidavit filed by way of rebuttal evidence, has been dismissed.

2. Counsel for the petitioner has contended that after closing her evidence in affirmative, respondent No.1/plaintiff cannot be permitted to produce evidence in rebuttal. He asserts that plaintiff can be permitted to lead evidence in rebuttal only on the issues, in which, the burden of proof is



on the defendants unless the plaintiff specifically reserves her right to do so. He has placed reliance upon a judgment of Division Bench of this Court in **Avtar Singh and another Vs. Baldev Singh and others 2015 (1) PLR 230.**

3. Opposing the petition, counsel for respondent No.1 has argued that the evidence being produced by respondent No.1/plaintiff is vital to establish that the plaintiff was married to defendant No.1 as this relationship has been denied by the defendants. He has placed reliance upon **Smt. Jaswant Kaur and another Versus Devinder Singh and others 1983 (2) RCR (Rent) 57.**

4. I have heard counsel for the parties and considered their arguments besides examining the paper-book with their able assistance.

5. Respondent No.1/plaintiff filed a suit, Annexure P-1, under Order 33 Rule 1 CPC for permission to sue as an indigent person and for recovery of Rs.7,20,000/- as arrears of maintenance payable to her @ Rs.20,000/- per month by defendant No.1 for the past three years claiming to be his legally wedded wife. Plaintiff also sought a decree of permanent injunction restraining the defendants from alienating the suit property. Suit is being contested by the defendants by filing a written statement and on the basis of pleadings of the parties, Trial Court framed the following issues:-

- “1. *Whether plaintiff is entitled to the relief of recovery as prayed for? OPP*
2. *Whether plaintiff is wife of Darshan Singh? OPP*
3. *Whether suit is not maintainable? OPD*
4. *Whether plaintiff has not come to the court with clean hands and suppressed material facts? OPD*
5. *Relief.”*



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6. Plaintiff led evidence in support of her claim and closed her evidence on the statement of her counsel on 27.07.2018. The order passed by the Trial Court is reproduced hereunder:-

“Pritam Kaur Vs. Darshan Singh

*Statement of Swatantar Sood, Advocate,
Counsel for the plaintiff.*

I close plaintiff evidence in affirmative.

*Sd/-
Civil Judge (Jr. Divn.)
Ludhiana
27.07.2018”*

7. After the defendants concluded their evidence, proceedings were fixed for rebuttal, if any, when the plaintiff tendered an affidavit of Harjinder Kaur, Annexure P-3, wherein it was deposed that the testator was a witness to the wedding ceremony of plaintiff with defendant No.1. At this stage, an application, Annexure P-4, was filed by some of the defendants for striking out of the affidavit, which after contest has been rejected vide order impugned herein.

8. A perusal of the issues framed by the Trial Court shows that the onus of the first two issues were on the plaintiff. The burden was on the plaintiff to establish that she was legally wedded wife of defendant No.1 and was entitled to the recovery of maintenance. The onus of the remaining two issues, which pertain to the maintainability of the suit and the alleged suppression of facts, was on the defendants. After examining the witnesses, plaintiff closed her evidence in the affirmative on 27.07.2018. In other words, she did not reserve a right to lead evidence in rebuttal.



9. Interpreting Order 18 Rule 3 CPC and following the judgment rendered by this Court in *Smt. Jaswant Kaur's case* (supra), a Division Bench of this Court in *Surjit Singh and others Vs. Jagtar Singh and others* **2007 (1) PLR 552** 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 (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.....”

10. Another Division Bench of this Court in **Jagdev Singh and others Vs. Darshan Singh and others 2007 (1) RCR (Civil) 794** held that as a matter of right, plaintiff cannot lead evidence in rebuttal on issues the onus of which is upon him. In **Avtar Singh's case (supra)**, another Division Bench of this Court 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 defendants as regards issues onus of which 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 the 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 plaintiff closed her evidence in the affirmative on 27.07.2018. She did not reserve a right to lead evidence in rebuttal nor such a right has been exercised by her at any time before the defendants led their evidence. Plaintiff, therefore, does not have a right to lead evidence in rebuttal and the



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Trial Court has clearly erred in rejecting the application filed by the defendants. This has caused prejudice to the defendants. Impugned order being perverse cannot be sustained.

12. For the afore-going reasons, revision petition is allowed and impugned order dated 06.02.2020 is set aside. Affidavit of Harjinder Kaur (Annexure P-3) is ordered to be struck off and shall 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 2003 and has been pending for the last more than two decades, 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 of a copy of this order.

25.02.2025

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(SUVIR SEHGAL)
JUDGE

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