

[CPC O.18 R. 3](#) – 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 AIR 1983 P & H 210 (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 Punjab Steel Corporation AIR 2001 P & H 331 (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. AIR 1982 P & H 432 (supra).

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