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Punjab and Haryana High Court

*S Nijjar, S Saron***Surjit Singh v. Jagtar Singh**

29 September, 2006

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 Kashmira 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).

JUDGMENT

S.S. Nijjar J.

1. This Civil Revision has been referred to D.B., in view of the divergent views expressed in some single Bench decisions of this Court on the interpretation of Order 18, Rule 3 of the Code of Civil Procedure (hereinafter referred to as "CPC"). A number of Civil Revisions i.e. CR No. 92 of 2004, 59. 1813, 2992, 3066 of 2005, 286, 287 and 2970 of 2006 have been admitted to be heard along with this CR No. 1213 of 2005. This order will dispose of all the aforesaid Civil Revisions as the law points involved in all the aforesaid Civil Revisions are identical.

2. We have to consider the scope and ambit of the right of the plaintiff to lead evidence in rebuttal, on issues the onus of proof of which is on the plaintiff.

3. We reproduce the entire reference in order to obviate the repetition of the salient facts which are necessary for the adjudication of the reference, as under:

Hemant Gupta. J.

The defendants are in revision petition aggrieved against the order passed by the learned trial Court permitting the plaintiffs to lead expert evidence in rebuttal.

The dispute in the suit relates to the estate of Kabal Singh who died on 13.6.1997. His daughter Jaspreet Kaur sold her V4th share in the land measuring 111 kanals 7 marlas vide sale deed dated 10.10.1997. The said sale was challenged by the plaintiffs on the basis of Will dated 6.4.1997, allegedly, executed by Kabal Singh in favour of his three sons i.e. the plaintiffs excluding his daughter i.e. defendant No. 4. The trial Court has framed the following issues:

1. *Whether the plaintiffs are owner in possession in respect of suit land? OPP*
2. *Whether Kabal Singh executed a valid Will dated 6.4.1997 in favour of the plaintiff? OPP*
3. *Whether the defendants have validly purchased the suit land vide sale deed dated 10.10.1997?*
4. *Whether Jaspreet Kaur was minor at the time of sale, if so, its effect? OPD*
5. *Whether the suit is properly valued for purposes of court fee and jurisdiction?*
6. *Relief.*

4. The plaintiffs closed their evidence on 19.12.2003 after examining four witnesses. The defendants closed their evidence on 4.5.2004. The case was adjourned for rebuttal and arguments. At the stage of rebuttal, the plaintiffs sought examination of finger print and handwriting expert to prove the signatures of Kabal Singh on Will dated 6.4.1997. The affidavit of expert along with report was tendered in Court but the same was resisted by the defendants on the ground that the onus to prove Will was on the plaintiffs. The plaintiffs have led evidence in affirmative and, therefore, cannot be allowed to lead evidence in rebuttal in respect of issue, the onus of which was on the plaintiffs. However, the learned trial Court declined such application on the ground that no prejudice is going to be caused to the respondents if the plaintiffs were to examine expert witnesses in the present case.

*5. The learned Counsel for the petitioners, at the outset, submitted that in some cases this Court has taken view that the plaintiffs are entitled to lead evidence in rebuttal even in respect of the issue the onus of which was on the plaintiffs. But the said judgments of the learned single Bench of this Court does not lay down correct principles of law. He relies upon other judgment of this Court reported as *Joginder Singh v. Baru Mal* 1990 (2) SLJ 775 *Gurnam Singh v. Jit Singh* 1999 (2) Civil Court Cases 583; *Dinesh Kumar v. State of Haryana* to contend that the contradiction in the view requires to be resolved by a larger Bench.*

*6. He also relies upon single Bench judgment of the Bombay High Court reported as *P.T. Anklesaria v. Union of India* 1974 (76) Bombay Law Reporter 688 to contend that the words occurring in Rule 3 of Order 18 of the Code of Civil Procedure "party beginning will then be entitled to reply generally on the whole case" are words not permitting the plaintiffs to lead evidence but such words relate to arguments alone in contradiction to evidence which is used in earlier part of Sub-rule (3).*

*7. A single Bench of this Court in *Kashmir Kaur v. Smt. Bachan Kaur* 2000 (2) Recent Civil Report 133 has held to the effect that the "whole case" as mentioned in various (sic) Rule 3 of Order 18 does include, in its sweep, the issues, onus whereof is upon the plaintiff. In the judgment reported as *Punjab Steel Corporation's case Batala v. M.S.T.C. Limited Calcutta*, the plaintiff was not permitted to lead evidence in respect of onus of issue which was on the defendant for the reason that the plaintiff has not reserved the right to lead evidence in rebuttal. A single Bench of this Court relying upon *Kashmir Kaur's case (supra)* has held that the plaintiff has a right as lead evidence in rebuttal on all the issues including the issue the onus of proof was on the defendants.*

8. In fact, the said issue came up for hearing before me as well in C.R. No. 1767 of 2004 *Narender Singh v. Randhir Singh* decided on February 25, 2005, and I followed the view taken by this Court in *Kashmir Kaur's case (supra)* and *Punjab Steel Corporation's case (supra)* though reliance was placed by the learned Counsel for the petitioners upon other judgments.

9. In *National Fertilizers Ltd. v. Municipal Committee, Bhatinda* AIR 1982 Punjab and Haryana 432, this Court has interpreted the provisions of Order 18, Rule 3 of the Code of Civil Procedure to mean that in case the burden of proof of some of the issues lies on the defendant, the plaintiff while starting his evidence may lead his evidence on all the issues including those the burden of which is on the defendant or reserve his right to lead evidence on the issues the burden of which is on the defendant after the latter has produced his evidence. A perusal of the said judgment would show that only right available with the plaintiff is to reserve its right to lead evidence on certain issues, the onus of which was on the other party. That may not include right to lead evidence on the whole case.

10. Still further, a Division Bench of this Court in *Smt. Jaswant Kaur v. Devinder Singh* again dealt with right of the party to lead evidence in rebuttal and when the party beginning can be said to have reserved right to lead evidence.

11. The provisions of Order 18, Rule 3 of the Code of Civil Procedure "party beginning will then be entitled to reply generally on the whole case" are, in fact, mean reply by way of argument or reply by way of evidence on all the issues is a question which is required to be resolved authoritatively by a Larger Bench. Such question arises frequently in a large number of cases and is of great general importance. Therefore, I deem it appropriate that this matter be put up before Hon'ble the Chief Justice for the consideration of such questions by a larger Bench.

Admitted.

To be listed for hearing on 17.5.2005.

Stay further proceedings before the trial Court in the meantime.

Liberty is given to serve, the respondents through their counsel before the trial Court.

Process dasti as well.

Sd/- Hemant Gupta, J.

March 3, 2005

4. We have heard the learned Counsel for the parties at length and perused the paper-book.

5. Mr. Mahajan, learned Counsel for the petitioner has reiterated the submissions which were made before the learned single Judge. He submits that plaintiff cannot lead evidence in rebuttal on issues the onus of which is on the plaintiff and in respect of which it has to lead evidence in affirmative. All necessary matters would have to be raised by way of reply in arguments. Plaintiff can be permitted to lead additional evidence by the Court, but cannot, as a matter of right, lead evidence in rebuttal where the onus of an issue or issues are on him. In support of this submission, learned Counsel has relied on the following judgments of this Court:

1. *National Fertilizers Ltd. v. Municipal Committee, Bhatinda* ;
2. *Punjab Steel Corporation, Batala v. M.S.T.C. Limited, Calcutta* ;
3. *Smt. Jaswant Kaur v. Devinder Singh* ;
4. *Kashmir Kaur v. Bachan Kaur* 2000 (2) RCR (Civil) 133;
5. *Jogtnder Singh v. Baru Mal* 1990 (2) SLJ 775;
6. *Narender Singh v. Randhir Singh* Civil Revision No. 1767 of 2004 decided on February 25, 2005;
7. *Dilsher Singh v. Manjit Inder Singh* ;
8. *Naranjan Singh v. Ajai Singh* 2006 (1) PLR 789;

9. *Gurnam Singh v. Jit Singh* 1999 (2) Civil Court Cases 583 (P & H);

10. *Dinesh Kumar v. State of Haryana* ;

11. *P.T. Anklesaria v. Union of India* 1974 (76) Bombay Law Reporter 688.

6. In Civil Revision No. 92 of 2004, Mr. Anil Khetarpal submits that generally Order 18, CPC deals with the hearing of the suit and examination of the witnesses. According to the learned Counsel, evidence in rebuttal can only be led by the plaintiff on the issues in which the burden of proof is on the defendant. The plaintiff cannot even be permitted to reserve the right to lead evidence in rebuttal on issues on which the burden of proof is on the plaintiff. The plaintiff is expected to lead the entire evidence before the evidence is led by the defence. In case the plaintiff is allowed to reserve the right to lead evidence in rebuttal, there would be a danger of the plaintiff not leading any evidence at all. In such a case, the entire evidence could be led by the plaintiff after the close of the evidence of the defendants. This would turn the entire sequence of leading evidence upside down.

7. Learned Counsel for the respondents, however, submits that evidence can be led in rebuttal with the permission of the Court. According to the learned Counsel, the facts of the present case, very aptly demonstrate the need to permit the plaintiff to lead evidence in rebuttal. He submits that in this case requirement of law was satisfied by producing the attesting witness. However, when the expert of the defendants stated that the Will is not signed by the deceased, it was necessary to lead evidence in rebuttal, to prove the handwriting of the deceased, for this proposition, learned Counsel also relies on the judgment rendered in the cases of Punjab Steel Corporation, Batala (supra), Kashmir Kaur (supra) and Narender Singh v. Randir Singh Civil Revision No. 1767 of 2004 (supra) and Naranjan Singh (supra).

8. We may now consider the aforesaid judgments. In the case of National Fertilizers Ltd. AIR 1982 P & H 432 (supra), the plaintiff instituted a suit for perpetual injunction against the Municipal Committee. After the conclusion of the evidence of the defendants, time was given to the plaintiff to lead evidence in rebuttal. The Municipal Committee filed an application that it was not entitled to lead evidence in rebuttal as it had not reserved its right to do so. The trial Court accepted the application of the Municipal Committee. Thus, the plaintiffs had come in revision. Interpreting Order 18 Rule 3, R.N. Mittal, J. held as follows:

9. From a perusal of the rule, it is clear that in case the burden of proving some of the issues lies on the defendant, the plaintiff while starting his evidence may lead the same on all the issues, including those the burden of which is on the defendant or reserve his right to lead evidence on the issues the burden of which is on the defendant after the latter has produced his evidence. However, the plaintiff did not reserve his right to do so. No practice, as referred to by the learned Counsel, can be taken notice of in a revision petition.

10. In the case of *Jaswant Kaur v. Devinder Singh* (supra), a Division Bench of this Court considered the provisions of Order 18, Rule 3 on a reference. The core question in the reference was formulated as follows:

S.S. Sandhawalia, C.J.: What is the last stage for exercising the option to reserve the right of rebuttal to the evidence adduced by the other party under Order 18, Rule 3 is the core question in this set of five civil revisions which are before us on a reference.

Answering the aforesaid question, it was held follows:

12. To conclude, I would hold on the language of Order 18, Rule 3, CPC on principle and on the weight of precedent that the last stage for exercising the option to reserve the right of rebuttal can well be before the other party begins its evidence.

13. Before parting with this judgment, the modalities of reserving the right of rebuttal also calls for some comment. It appears to me that herein also an overly strict view is not to be taken. If it is possible to necessarily imply from the mode of reservation that the right of rebuttal has been retained then it should not be negated, merely on the ground that it has not been so done in express terms. Cases where the party or its counsel makes the Statement that he closes his evidence in the affirmative only, would inevitably imply that rebuttal evidence may well be led and consequently such right has been reserved.

18. In Joginder Singh's case (supra), it has been held that in rebuttal, the plaintiff could not lead evidence on the issues burden of which was fixed on the plaintiff-him-self. But this observation was made by the learned single Judge again while considering an application under Order 18, Rule 17A of the CPC. After the close of the evidence of the defendant, the plaintiff was granted an opportunity to lead evidence in rebuttal on the issues in which the burden of proof was on the defendant. At that stage, the plaintiff summoned the handwriting expert. He also moved an application for allowing the expert to be examined as a witness. His report was also submitted. This application was dismissed. Thereafter, the plaintiff filed an application for leading additional evidence which was allowed by the trial Court. This order was set aside by the learned single Judge with the following observations:

5. Having failed to achieve in his object to produce" the Expert when his application was dismissed on August 3, 1989. the plaintiff moved a second application under Order 18, Rule 17-A of the CPC for producing the expert on Issue No. 1 stating therein that by mistake the expert could not be produced when the plaintiff was afforded an opportunity to produce the evidence in affirmative. This contention obviously could not be accepted. It was only an afterthought story. Even otherwise the suit remained pending for plaintiffs evidence from June 2, 1988 to February 7, 1989. It was only after the defendant had closed the evidence that a thought came to the plaintiff to fill up the lacuna in his evidence produced in affirmative. This obviously could not be done and the trial Court thus illegally exercised jurisdiction in allowing the application.

19. The aforesaid matter was also decided on its own facts.

20. In Dilsher Singh's case AIR 1991 P & H 165 (supra), one of the defendants had challenged the order passed by the trial Court whereby an application filed by defendants to produce an expert after the plaintiff had closed his evidence in rebuttal, was rejected. The onus to prove issue No. 3 was on the defendants who had relied upon the Will. In paragraph 3. it was observed as follows:

3. The onus to prove the aforesaid issue was on the defendants who had relied upon the Will. It was open to the defendants, when called upon to produce evidence after the plaintiff closed his evidence to produce the Expert, if so advised. The defendants felt satisfied for proving the Will by producing other evidence i.e. the Scribe and the attesting witnesses. It was thereafter that the plaintiff was to produce evidence in rebuttal and he produced one Expert. After the plaintiff had produced evidence in rebuttal, there was no occasion for the defendants to further produce evidence in rebuttal of rebuttal.

21. This view is in conformity with the view expressed by the Division Bench in Jaswant Kaur's case (supra).

22. In Dinesh Kumar's case (supra), the provision of Order 18, Rule 17 was considered. It was held that the plaintiff could not be allowed to produce evidence to rebut the evidence led by the defendants, in rebuttal to the evidence led by the plaintiff on the issues, the burden of which was on the plaintiff.

23. In the case of Gurnam Singh (supra), additional issues were framed by the trial Court. Onus of Issue No. 16-C was on the plaintiff. At that stage, on behalf of the plaintiff, it was stated that the plaintiff had already led evidence in affirmative and he does not want to lead any evidence, after recasting of the issues. In other words, the plaintiff did not want to lead any evidence in affirmative. Subsequently, the plaintiffs counsel expressed his desire to produce evidence in rebuttal. This was rejected by the trial Court. The plaintiff had challenged the aforesaid order in the Civil Revision. It was observed as follows:

4. Before this Court the basic question, agitated was as to if the petitioner had the right to lead evidence in rebuttal or not? Perusal of the order so passed reveals that petitioner wanted to lead evidence in rebuttal in respect of Issue No. 16-C reproduced above. But the onus of said issue was on the petitioner. Once the onus of the said issue was on the petitioner, he had no right to lead the evidence in affirmative. Consequently, the petitioner could not lead the claimed evidence and there is no ground to interfere in the impugned order. The revision petition may fail and is dismissed.

The aforesaid observations, however, were made by this Court, in view of the statement made by the counsel for the plaintiff-petitioner that the plaintiff had already led the evidence in affirmative and did not want to lead any evidence after recasting of the issues.

Thus, the observation was made by the learned single Judge that "once the onus of the issue was on the petitioner, he had no right to lead the evidence to affirmative.

24. In the case of Punjab Steel Corporation AIR 2001 P & H 331 (supra), the plaintiff led the evidence in affirmative. Thereafter, the defendants led their evidence. After the defendants led their evidence, the plaintiff sought to lead evidence in rebuttal, on issues, the onus of which lay on them. The evidence was sought to be led with a view to rebut the evidence led by the defendants. Defendants moved an application whereby they objected to the examination of evidence in rebuttal as the plaintiff had not reserved its right to lead rebuttal evidence at the time when he closed the evidence in affirmative. The application of the defendants was dismissed. The plaintiff was permitted to lead evidence in rebuttal. The defendants had challenged the order of the trial Court in a Civil Revision. The learned single Judge noticed the statement made by the counsel for the plaintiff before the trial Court which was as under:

1 tender into evidence certificate of incorporation Ex. P3, Ex. P4- and close my evidence in affirmative.

Whilst interpreting Order 18, Rule 3, learned single Judge noticed a judgment of the Andhra Pradesh High Court in the case of Illapu Nookalamma v. Illapu Simchachalam, in which it was held that plaintiff would certainly have a right to adduce evidence by way of rebuttal on issues where the burden of proof was on the defendant. But to acquire that right by way of rebuttal, the plaintiff should conform strictly with the provisions of Order 18, Rule 3, CPC. The learned single Judge also noticed the judgments in the cases of National Fertilizers Ltd. (supra), Smt. Jaswant Kaur (supra), but the same were not distinguished. A passing reference was also made to the judgment in the case of Swaran Singh v. Bhagwan Singh 1999 (123) PLR 789. Another judgment of the Andhra Pradesh High Court in the case of Nalajala Narasayya v. Nalajala Sitayya was also referred to. It has been held therein that in order to lead evidence in rebuttal, the plaintiff has to reserve the right to do so before the evidence of the defence commences. The learned single Judge notices the judgment in the case of Smt. Kashmir Kaur (supra), in which it has been held that the petitioner is entitled to lead evidence in rebuttal as a matter of right. M.L. Singhal, J. on reference to the aforesaid judgments in the case of Punjab Steel Corporation (supra), observed as under:

13. In this case, the plaintiff led evidence on the issues, the onus of which lay on it and then closed its evidence in affirmative. While closing its evidence in affirmative, the plaintiff was aware that it would be leading evidence in rebuttal to the evidence to be led by the defendants on issues, the onus of which lay on them. If the plaintiff's counsel had just closed the evidence after it had led evidence on issues Nos. 1 and 2 without qualifying that he closes evidence of his party in affirmative, it could have been said that there was no reservation of right or rebuttal in it, after defendants have led their evidence on the issues, the onus of which lay on them. In this case, it would be mere repetition that while closing its evidence the plaintiff's counsel clearly stated that he tends into evidence certificate of incorporation Ex. P3, Ex. P4 and closes the evidence in affirmative. While doing so, he was aware that, the onus of certain issues lies on the defendants to discharge which they would be leading evidence and he will be leading evidence to rebut that evidence. In this case, the framing of issues Nos. 3, 4 and 5 clearly suggests that they are very vital issues, the onus of which was to be discharged by the defendants and that evidence was to be rebutted by the plaintiff. In this case, there is implied reservation of the right to rebut inhering in the plaintiff's counsel's statement.

14. Plaintiff could not be barred from adducing evidence to rebut the evidence led by the defendants on issues Nos. 3, 4 and 5. Plaintiff could not be barred from leading evidence by way of reply generally on the whole case. While leading their evidence, the defendants led evidence to prove issues Nos. 3, 4 and 5. In addition, they led evidence to disprove issues Nos. 1 and 2. Plaintiff had to be given an opportunity to rebut the evidence led by the defendants on these two aspects of the case. The use of the words in Order 18, Rule 3, CPC, that the party beginning will then be entitled to reply generally on the whole case, suggest that while leading rebuttal evidence, the plaintiff can lead evidence to rebut the evidence led by the defendants on the issues, the onus of which lay on him plus to rebut the evidence which defendants had led to rebut the evidence led by the plaintiff on the issues, the onus of which lay on the plaintiff.

15. Even otherwise, trial of suit is not a game of chess, where trickery can sometimes play. Rules of procedure are mere handmaids of justice. We have to interpret the rules of procedure in a manner that justice is advanced and not impeded.

In coming to the aforesaid conclusion, M.L. Singhal, J. has relied on the following observations of the Division Bench in the case of Smt. Jaswant Kaur AIR 1983 P & H 210 (supra).

On the language of Order 18, Rule 3, CPC, on principle and on the weight of precedent, the last stage for exercising the option to reserve the right of rebuttal can well be before the other party begins its evidence.

An overly strict view cannot also be taken about the modality of reserving the right of rebuttal. If it is possible to necessarily imply from the mode of reservation that the right of rebuttal has been retained, then it should not be negated, merely on the ground that it has not been so done in express terms. Cases where the party or its counsel makes the statement that he closed his evidence in the affirmative only, would inevitably imply that rebuttal evidence may well be led and consequently such right has been reserved.

In our opinion, the learned single Judge has misconstrued the observations made by the Division Bench in the case of Smt. Jaswant Kaur (supra). In the case of Narender Singh v. Randhir Singh CR No. 1767 of 2004 decided on 25.2.2005, Hemant Gupta, J. has followed the law laid down in the case of Smt. Kashmir Kaur (supra) and M/s. Punjab Steel Corporation (supra) and held that the plaintiff is entitled to lead evidence in rebuttal, even on issues where the onus of proof is on the plaintiff. We are unable to read into the aforesaid judgments any implied reservation of the right to lead evidence in rebuttal. We are also unable to read into Order 18, Rule 3 of the CPC any inherent right in the plaintiff to lead evidence in rebuttal on issues in which the onus of proof is on the plaintiff. For the aforesaid reasons, we are unable to agree with the view expressed by the learned single Judges in the cases of Kashmir Kaur (supra), Punjab Steel Corporation (supra) and Narender Singh (supra).

25. In the case of Naranjan Singh (supra), M.M. Kumar, J. in our opinion, has correctly distinguished the situation where the defendants had filed a counter-claim. The original plaintiff was not permitted to lead evidence in rebuttal of the evidence led by the defendant in support of the counterclaim. The request of the plaintiff to produce evidence to rebut the evidence led by the defendants was denied, on the basis of the judgment of this Court in the case of Dinesh Kumar AIR 2003 P & H 73 (supra). In these circumstances, it was observed as follows:

*7. It is also evident that the plaintiff-petitioner has already tendered the report of the expert Shri Gopal Krishan Sharma, in pursuance to the opportunity granted by the trial Court. The plaintiff-petitioner deposited Rs. 200/- as diet money in the trial Court and thereafter Shri Gopal Krishan Sharma, Document Expert was summoned through *dasti* summons. When the case was posted for hearing on 6.1.2003, the expert witness has already placed on record an affidavit dated 6.1.2003 along with his report dated 2.1.2003. He was allowed to examine the wilting dated 28.5.1958 and make comparison. It was after the aforementioned progress, that an application by defendant-respondent was filed restraining the plaintiff-petitioner to examine the expert. From the bare perusal of Order 8, Rule 6-A(2)(3) and (4), it is revealed that a counter-claim has to be treated as a cross suit or a separate suit. The onus to prove issue No. 3-A with regard to possession of two biswas of land has been placed on the defendant-respondents. If, they are to be treated as plaintiff by fiction of law then after adducing evidence by them, the defendant namely the present plaintiff-petitioner would be entitled to controvert the evidence adduced by them. Following the aforementioned analogy it must be concluded that the plaintiff-petitioner is not in fact adducing affirmative evidence in rebuttal. He is only controverting the evidence adduced by defendant-respondent in support of his counter-claim. It is further pertinent to mention that there is no requirement of any law that the plaintiff-petitioner is required to reserve his right to controvert the evidence of defendant-respondents, as has been provided for a different situation under Order 18, Rule 3 of the Code. Therefore, this petition deserves to be allowed.*

26. The aforesaid reasoning of the learned single Judge are unexceptionable.

27. 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 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).

28. The reference is answered accordingly. Let the Civil Revision be placed before the single Judge for decision of the same on merits.