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Section 19(2) read with Rule 12(A) were satisfied for the purposes of the defence taken by the accused.

(19) In the present case, the case is still at the stage of evidence of the complaint. The accused has yet to produce his defence. There is absolutely nothing on the record to show that the accused-petitioner had purchased the packets of 'Suji Rusk' from a manufacturer/dealer or distributor with a written warranty, nor there is anything on the record to show that he had purchased the same against any bill or cash memo, nor there is anything on the record to show that the label thereon, contained any warranty, etc. In this regard. Under these circumstances, at this stage, the criminal complaint and the proceedings taken thereon, cannot be quashed only on the ground that the accused-petitioner is a dealer or that he had stored the article of food in the same condition, in which he had purchased the same, in the absence of any warranty, bill or cash memo or label.

(20) No other point has been urged before me.

(21) For the reasons recorded above, I find no merit in this petition and the same is hereby dismissed.

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**R.N.R.**

*Before M.L. Singhal, J*

M/S PUNJAB STEEL CORPORATION —*Petitioner*

*versus*

M.S.T.C. LTD—*Respondent*

C.R. No. 1427 of 2001

3rd July, 2001

*Code of Civil Procedure, 1908—0.18 Rl. 3—Several issues—Plaintiff leading evidence on issue onus of which lay on it and closing evidence in affirmative without expressing any reservation to adduce evidence by way of rebuttal—Defendant leading evidence onus of which lay on it—Whether plaintiff entitled to adduce evidence to rebut the evidence led by the defendant—Held, yes.*

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Held, that the plaintiff could not be barred from adducing evidence to rebut the evidence led by the defendants on issues No. 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 3, 4 & 5. In addition, they led evidence to disprove issues No. 1 & 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 0.18 Rl. 3 CPC that the party beginning will then be entitled to reply generally on the whole case, suggests 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.

(Para 16)

Deepak Sibal, Advocate for the petitioner

Hemant Kumar, Advocate for respondent

### JUDGMENT

*M.L. Singhal, J.*

(1) M/s M.S.T.C. Ltd., a Government of India undertaking and a company incorporated under the Indian Companies Act, 1956 filed a suit for the recovery of Rs. 69,43,692 against M/s Punjab Steel Corporation, Sekhri Building Shukar Pura, Den Road, Batala, S/Shri Ashwani Kumar, Anand Kumar, Inder Kumar sons and Smt. Janaki Rani Sekhri wife of Shri Vishwamiter Sekhri, and H.U.F. M/s Vishwamiter Sekhri and sons through Shri Ashwani Kumar Sekhri as Karta, being the price of goods and interest thereon.

(2) In this case, the following issues were framed by the learned trial Court :—

- “(i) Whether the plaintiff is entitled to the recovery of Rs. 69,43,692 being the price of goods ? OPP
- “(ii) Whether the plaintiff is entitled to the recovery interest under Order 7 Rule 1 CPC ? OPP

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- (iii) Whether the plaintiff has suppressed the material facts from this Court ? If so, its effect ? OPD
  - (iv) Whether the defendant deposited the amount to the tune of Rs. 26,70,452.20 in the account of the plaintiff in the books of account of the defendant ? OPD
  - (v) Whether the amount of Rs. 40,40,708 was adjusted and a sum of Rs. 61,771.63 is due and payable by the plaintiff to the defendants ? OPD
  - (vi) Relief.

(3) Plaintiff led evidence in affirmative. Thereafter, defendants led their evidence. After the defendants had led their evidence, the plaintiff sought to lead evidence in rebuttal. Plaintiff sought to examine Paramjit Singh with a view to rebut the evidence led by the defendants, on the issues, the onus of which lay on them.

(4) Defendants moved an application whereby they objected to the examination of Paramjit Singh in rebuttal, urging that no rebuttal evidence could be led by the plaintiff when the plaintiff had not reserved its right to lead rebuttal evidence at the time when it closed its evidence in affirmative. Vide Order dated 19th February, 2001, Additional Civil Judge (Senior Division), Batala dismissed this application and allowed the plaintiff to lead evidence in rebuttal.

(5) Aggrieved by this Order dated 19th February, 2001, defendants have come up in revision to this Court

(6) I have heard the learned counsel for the parties and have gone through the record.

(7) It was submitted by the learned counsel for the petitioners (defendants) that the plaintiff could not be allowed to lead evidence in rebuttal when it had not reserved its right to lead evidence at the time when the plaintiff made statement closing the evidence in affirmative. It was submitted that the plaintiff could be allowed to lead evidence in rebuttal only if the plaintiff had reserved its right to lead evidence in rebuttal at the time when it closed its evidence in affirmative. It was submitted that in this case, then the plaintiff closed its evidence

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in affirmative, it did not reserved any right to lead evidence in rebuttal. Shri B.M. Lal, Advoacte, counsel for the plaintiff made statement on 16th May, 1998 which reads as follows :—

“I tender into evidence certificate of incorporation Ex. P3, Ex. P4 and close my evidence in affirmative.”

(8) It was submitted that in statement dated 16th May, 1998, the plaintiff did not reserved any right to lead evidence in rebuttal and therefore, the plaintiff could not be allowed to lead evidence in rebuttal.

(9) It was submitted that in this case, the onus of issues No. 1 and 2 lay on the plaintiff while the onus of issues No. 3,4 and 5 lay on the defendants. Plaintiff has led evidence in affirmative on issues No. 1 and 2. Defendants have led evidence on issues No. 3, 4 and 5. Plaintiff could lead evidence in rebuttal to the evidence led by the defendants on issues No. 3, 4 and 5 if it had reserved its right to lead rebuttal evidence and had closed the evidence in affirmative only. It was submitted that in this case, the plaintiff did not make any such reservation while closing its evidence in affirmative and therefore, the plaintiff could not be allowed to exercise the right given to it in Order 18 Rule 3 CPC. Order 18 Rule 3 CPC reads as follows:—

“Where there are several issues :—

Where there are several issues, the burden of proving some of which lies on the other party, the pary beginning may, at his option, either produce this evidence on those issues or reserved it by way of answer to the evidence produced by the other party ; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will than be entitled to reply generally on the whole case.”

(10) Order 18 Rule 3 entitled the party beginning to adduce evidence, either to adduce his evidence or reserve it by way of rebutal to the evidence adduced by the other side on the issues, where the burden lies on the other party, and the party beginning will then by

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entitled to reply generally on the whole case. In other words, the expression "party having the right to begin" in Rule 2. Learned counsel for the petitioner submitted that the plaintiff is entitled to express his reservation to adduce its evidence by way of rebuttal after the completion of the evidence on the side of the plaintiff and before the commencement of the evidence for the defendants under Order 18 Rule 3 CPC, in respect of issues of which onus lies on the defendants. The option given to the party contemplated under Order 18 Rule 3 CPC is to be exercised only at or before the time when the other party has got right to lead evidence, begins, and not afterwards. In support of this submission, he drew my attention to *Illapu Nookalamma, versus Illapu Simchachalam, (1) In AIR 1969 Andhra Pradesh 82 (supra)*, it was the plaintiff that had to begin her evidence on the issues where the burden admittedly lay on her. As regards issues No. 8 and 9, where admittedly the burden was on the defendant. It was the defendant that had to lead evidence in so far as those issues were concerned and the plaintiff would certainly have a right to adduce evidence by way of rebuttal, the plaintiff should conform strictly with the provisions of Order 18 Rule 3 CPC. She had to express her reservation to adduce the evidence by way of rebuttal. It was submitted that the plaintiff could exercise the option before commencement of defendant's evidence that he would lead evidence in rebuttal.

(11) In *National Fertilizers Ltd., versus Municipal Committee, Bhatinda and another (2)* it was observed that :—

"it is clear from Rule 3 of Order 18 that in case the burden of proving some of the issues lies on the defendant, the plaintiff while starting the 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, in the instant case, the plaintiff did not reserved his right to do so and as such, the plaintiff could not be allowed to lead evidence by way of rebuttal."

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(1) AIR 1969 Andhra Pradesh 82

(2) AIR 1982 Pb & Hr. 432

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(12) In *Smt. Jaswant Kaur and another versus Devinder Singh and Others*, (3) a Division Bench of this Court laid down as follows :—

“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.”

(13) In *Nalajala Narasyya versus Nalajala Sitayya and others*, (4) it was laid down that the right of reservation to produce evidence in rebuttal under Order 18 Rule 3 should be exercised either before the party beginning his evidence or in any event, before the other party begins his evidence so that it might be borne in mind that the party beginning has not closed the evidence. Therefore, the last stage for exercising the option to reserve the right of rebuttal can well be before the other party begins his evidence. It was also observed that option to reserve the right of rebuttal need not always be express but it can also be implied, from facts of the case. where a counsel makes a statement that he is closing the evidence of his party in the affirmative only, in such a case, it must be held that the party has implicitly reserved the right to adduce rebuttal evidence. Such a reservation can be implied in a case where the plaintiff had not adduced any evidence whatsoever on some issues in respect of which the burden lay on the opposite party. In *Swaran Singh versus Bhagwan Singh and others*, (5), it was held that there is no right with the petitioner to lead evidence rebutting the rebuttal evidence. In essence, the submission made by the learned counsel for the petitioner was that when the plaintiff had not reserved his right to lead evidence in

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(3) AIR 1983 Pb & Hy. 210

(4) AIR 1992 Andhra Pradesh 97

(5) 1999 (3) PLR 789

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rebuttal, while closing his evidence in affirmative, he lost his right to lead rebuttal evidence.

(14) In this case, the onus of issues No. 1 and 2 lay on the plaintiff while the onus of issues No. 3, 4 and 5 lay on the defendants. While beginning to lead evidence either plaintiff could lead evidence in affirmative on issues No. 1 and 2 or the plaintiff could lead evidence in affirmative on issues No. 1 & 2 and also rebuttal evidence on issues No. 3, 4 & 5 and after the plaintiff has closed his evidence, the defendants could lead its evidence on issues No. 3, 4 & 5 and also evidence to rebut the evidence led by the plaintiff on issues No. 1 & 2 or the plaintiff could lead evidence on issues No. 1 and 2 and close its evidence in affirmative and thereafter the defendants could lead evidence on issues No 3, 4 and 5 and also evidence to rebut the evidence led by the plaintiff on issues No. 1 and 2 in affirmative and thereafter, the plaintiff could lead evidence in rebuttal to rebut the evidence led by the defendants on issues No. 3, 4 and 5 and also evidence to rebut the evidence led by the defendant on issues No. 1 and 2 in rebuttal. Duty of the defendants was thus two fold. Defendants were required to lead evidence to discharge the onus of issues No. 3, 4 and 5 and also evidence to disprove the issues No. 1 and 2, the onus of which lay on the plaintiff and thereafter, the plaintiff could lead evidence to rebut the evidence led by the defendants on issues No. 3, 4 and 5 and also generally on the whole case. In *Smt. Kashmir Kaur versus Smt. Bachan Kaur and another*, (6) the learned Single Judge of this Court held that civil matters are decided on preponderance of evidence and the onus of an issue, be it initially placed on one party or the other, keeps on shifting during the currency of the trial, respondent examined handwriting expert, petitioner could well take it that the onus again shifted on her to rebut the evidence, the Court might have given permission to examine the handwriting expert, even though relating to an issue, onus whereof was initially to be discharged by the petitioner, petitioner is entitled to lead evidence in rebuttal as a matter of right.

(15) 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 No. 1 and 2 without qualifying that he closes evidence of

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his party in affirmative, it could have been said that there was no reservation of right of 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 more repetition that while closing its evidence the plaintiff's counsel clearly stated that he tenders 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 No. 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.

(16) Plaintiff could not be barred from, adducing evidence to rebut the evidence led by the defendants on issues No 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 No. 3,4 and 5. In addition, they led evidence to disprove issues No.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 Rules 3 CPC, that the party beginning will then be entitled to reply generally on the whole case", suggests 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.

(17) Even otherwise, Trial of suit is not a game of chess, where trickery can sometimes plays. Rules of procedure are mere hand made of justice. We have to interpret the rules of procedure in a manner that justice is advanced and not impeded.

(18) For the reasons given above, this revision fails and dismissed.

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S.C.K.