

**IN THE COURT OF LXXXII ADDL.CITY CIVIL & SESSIONS
JUDGE, AT BENGALURU (CCH.83)**

THIS THE 1st DAY OF MARCH 2021

**PRESENT:
SRI.DEVARAJA BHAT.M.,B.COM,LL.B.,
LXXXII ADDL.CITY CIVIL & SESSIONS JUDGE,
BENGALURU.**

IA.Nos.X & XI

BETWEEN:

Anupama Wine Distributors

: APPLICANT/PLAINTIFF

AND

M/s Tilaknagar Industries Ltd.

: OPPONENT/DEFENDANT

IN

Com.O.S.No.8311/2007

BETWEEN:

Anupama Wine Distributors

: PLAINTIFF

AND

M/s Tilaknagar Industries Ltd.

: DEFENDANT

ORDERS ON I.A. NO.X & XI

I.A.No.X is filed under Order XVIII Rule 17 read with Section

151 of Civil Procedure Code to permit the Plaintiff to tender its evidence on the counter claim filed by the Defendant. I.A.No.XI is filed under Section 151 of Civil Procedure Code to recall the Order dated 11.03.2020 posting the present suit for arguments.

2. In the accompanying Affidavits, the Director of the Applicant/Plaintiff has contended as follows:-

That this suit is filed by the Plaintiff for recovery of Rs.7,31,10,153/- with interest at 18% per annum, that the Defendant has lead its evidence on the counter claim and also its defence and the witness of the Defendant has been fully cross-examined by the Plaintiff, that after recording the evidence of the Defendant, the case was posted for final arguments on 11.03.2020 instead of giving an opportunity to the Plaintiff to lead its defence evidence on the counter-claim by the Defendant, that due to COVID-19 pandemic, he could not file the application earlier, that this Court has not provided an opportunity to the Plaintiff to lead its evidence on the counter claim filed by the Defendant, that by fiction of law the Defendant who has filed a counter claim is treated as a Plaintiff and the Plaintiff against whom the counter claim is made is treated as a Defendant, the said right of the Plaintiff to lead evidence is a substantial right and the Plaintiff ought not to be denied the same and hence, there is need to permit the Plaintiff

to lead its evidence on the counter claim of the Defendant by recalling the order dated 11.03.2020 posting the case for arguments and therefore, he has filed the said applications for the above-mentioned reliefs.

3. The Opponent/Defendant has filed its detailed objections on 24.10.2020 before the Filing Counter to the above applications and prayed to dismiss the said Applications.

4. I have heard the arguments of the both advocates. The Advocate for the Defendant has filed his written arguments on 28.01.2021. The learned Advocate for the Applicant/Plaintiff has filed his written arguments on 02.02.2021.

5. Based on the contentions of the respective parties, submissions made by the learned Advocate for the Plaintiff, I formulate the following Points for my consideration:-

(1) Whether there are grounds to recall the Order dated 11.03.2020 posting the case for arguments and to permit the Plaintiff to lead his evidence on the counter claim as prayed?

(2) What Order?

6. My findings are as follows:-

Point No. 1: - In the Negative.

Point No. 2:- As per my final orders for
the following reasons.

REASONS

7. Point No. 1: - The learned Advocate for the Plaintiff has relied on a decision reported in **2006 - S.C.C. Online P&H - 225 (Naranjan Singh vs. Ajaib Singh & another)** and prays to permit him to adduce rebuttal evidence on the counterclaim of the defendant.

8. The main issue involved in this case is with regard to the interpretation of Order XVIII Rule 3 of the Civil Procedure Code, which reads as follows: -

"Evidence where several issues:- Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve 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 then be entitled to reply generally on the whole case."

9. It is to be noted that the Division Bench of the Hon'ble Punjab High Court itself has taken a contrary view in the subsequent decision reported in **A.I.R. - 2007 - Punjab and Haryana - 1 (Surjit Singh and Others. vs. Jagtar Singh and Others)**, wherein it is held as follow :-

"In our opinion, Order XVIII 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 XVIII 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, 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 M/s.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)."

10. Hence, I cannot rely on the above-mentioned decision reported in **2006 - S.C.C. Online P&H - 225 (Naranjan Singh vs. Ajaib Singh & another).**

11. Admittedly in the present case, the Plaintiff has not

reserved his right to adduce rebuttal evidence on any of the issues. The arguments of the Learned Advocate for the Plaintiff that the Plaintiff need not reserve his right to adduce rebuttal evidence in case of a counter claim of the Defendant and that the plaintiff would get a right to lead rebuttal evidence again after adducing the evidence of the defendant on the said counter claim. I cannot accept the said arguments because the Counterclaim has to be raised on the same cause of action that of the Plaintiff. When such being the case, the Plaintiff has to adduce his evidence not only on contentions raised by him in the Plaint, but also his contentions on the counterclaim of the defendant in the first instance itself. If he wants to adduce rebuttal evidence after the evidence of the Defendant, he should have reserved his right at that time itself. Without reserving the said right, he cannot ask for adducing rebuttal evidence, just because the defendant has raised a counterclaim.

12. The Learned Advocate for the Defendant has relied on an Order passed in **Writ Petition No. 6697/2013 & 6842/2013 (GM-CPC) dated 31.01.2015 (Chikkasubbanna & Others vs. K.Govardhan & another)** wherein it is clearly held that when leave was not sought by the Plaintiff, either on the conclusion of evidence on his side or at the beginning of the

evidence of the defendants, and such a request was made after the conclusion of trial and when the case was listed for arguments, the Plaintiff cannot be permitted to lead rebuttal evidence, by relying the earlier decisions reported in **A.I.R. - 1971 - KAR - 17 (S. Chandra Keerti vs. Abdul Gaffar & Others) and 2014 (3) - KCCR - 2139 (Dr.(Major) Rajesh S.M. vs. C.J. Mahabala)**. The Learned Advocate for the Plaintiff has argued that in the said decisions, it does not discuss a situation pertaining to counter claim. However, I cannot accept the said arguments of the Learned Advocate for the Plaintiff. Even if, the Defendant has taken up a contention of counterclaim, the same should be relate to the cause of action of the Plaintiff for the suit, the Plaintiff should have adduce his evidence on all issues and if he reserves the said right, then only he can be permitted to lead further evidence. In the present case, the Plaintiff has not reserved his right to adduce rebuttal evidence. The present applications are filed when the case is posted for hearing final arguments. Therefore, he is not entitled to adduce any rebuttal evidence on the counterclaim of the defendant as prayed. Hence, I answer this Point in the **'Negative'**.

13. Point No. 2: - Therefore, I proceed to pass the following Order.

ORDER

The I.A.No.X filed under Order XVIII Rule 17 read with Section 151 of Civil Procedure Code to permit the Plaintiff to tender its evidence on the counter claim filed by the Defendant is dismissed.

I.A.No.XI filed under Section 151 of Civil Procedure Code to recall the Order dated 11.03.2020 posting the present suit for arguments is also dismissed.

The Applicant/Plaintiff is hereby ordered to pay cost of Rs. 2,000/- to the Defendant as per Section 35 of Civil Procedure Code as amended under Section 16 of the Commercial Courts Act.

Since this is an old case, that too, more than 17 years old, both advocates are directed to submit their oral arguments or written arguments on the next occasion itself without fail, i.e., on 08.03.2021.

(Dictated to the Judgment Writer, typed by her directly on the computer, verified by me and pronounced in the open court on **1st day of March, 2020**).

(M. DEVARAJA BHAT)
LXXXII Addl. City Civil & Sessions Judge,
Bengaluru.

The Orders on I.A.No.X & XI is pronounced in Open Court. The operative portion of the said Orders is as follows:-

ORDER

The I.A.No.X filed under Order XVIII Rule 17 read with Section 151 of Civil Procedure Code to permit the Plaintiff to tender its evidence on the counter claim filed by the Defendant is dismissed.

I.A.No.XI filed under Section 151 of Civil Procedure Code to recall the Order dated 11.03.2020 posting the present suit for arguments is also dismissed.

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Since this is an old case, that too, more than 17 years old, both advocates are directed to submit their oral arguments or written

arguments on the next occasion itself without fail, i.e., on 08.03.2021.

(vide my separate detailed Orders on I.A.No.X & XI dated 1.03.2021).

(Typed to my dictation).

LXXXII ACCJ, B'LURU.