

SUPREME COURT OF INDIA

Jeet Mohinder Singh

Vs.

Harminder Singh

C.A.No.4437 of 2004

(Arijit Pasayat and C.K.Thakker JJ.)

26.07.2004

JUDGMENT

Arijit Pasayat, J.

1. Leave granted.

2. In an Election petition, an application purported to be in terms of Order XVI Rule 3 of the *Code of Civil Procedure, 1908* (in short the 'Code') was filed. The prayer was to recall PW-32 - Surinder Pal Singh for the purpose of confronting him with the judgment already passed in a different case. The application was rejected by a learned Single Judge of the Punjab and Haryana High Court on the ground that a witness cannot be confronted with the judgment in which there is a reference to the previous statement. It was further held that it would not be in the interest of justice to recall a witness again and again.

3. Mr. Ranjit Kumar, learned senior counsel appearing for the appellant submitted that though the application was styled as one under Order XVI Rule 3, but in essence it was a petition under Order XVIII Rule 17 of the Code and, therefore, the prayer should have been accepted. It was also submitted that the view taken by the High Court is not correct in law.

4. Mr. K.G. Bhagat, learned counsel appearing for respondent No.1 submitted that when a petition was filed under Order XVI Rule 3 of the Code, it is not open to the appellant to state that the petition was in essence different and, therefore, the High Court rightly rejected it. It was, however, fairly accepted that in a given case the witness can be recalled for the purpose indicated.

5. The prayers in the application styled as one under Order XVI Rule 3 of the Code cannot be any stretch of imagination be encompassed by the said provision. Order XVI Rule 3 deals with tender of expenses to witnesses. So far as the Punjab and Haryana High Court in concerned, the rule reads as follows in view of the amendment:

6. For Rule 3, substitute –

"3 Tender of expenses to witness - (1) The sum paid into a Court shall except in the case of a Government servant be tendered to the person summoned, at the time of serving the summons if it can be served personally.

(2) When the person summoned is a Government servant, the sum so paid into Court shall be credited to Government; *

Exception - (1) In cases in which Government servants have to give evidence at a Court situate not more than five miles from their headquarters, actual traveling expenses incurred by them may, when the Court considers it necessary, be paid to them.

Exception - (2) A Government servant, whose salary does not exceed Rs. 10 per mensem, may received his expenses from the Court." *

7. Though the nomenclature of an application is really not material and the substance is to be seen, yet it cannot be said that a party shall be permitted to indicate any provision and thereafter contend that the nomenclature should be ignored. Duty is cast on the parties to properly frame their applications and indicate the provisions of law applicable for making the application. Nomenclature may not be normally material. But there is a purpose in indicating the nomenclature in a clear and precise manner. Though it is the substance and not the form which is material but as indicated above, that cannot be a reason to quote an inappropriate provision of law and then say 'Don't look at the nomenclature'. The care and caution which is required to be taken cannot be diluted to absurd limits. The care and caution required to be observed while making an application in the highest Court of the State are sadly missing in this case. Order XVIII Rule 17 deals with recall and examination of a witness and reads as follows:

"The Court may at any stage of a suit recall any witness who has been examined and may subject to the law of evidence for the time being in force put such questions to him as the Court think fit." *

In *The Municipal Corporation of Greater Bombay vs. Lala Pancham and others*, it was observed that it is not open to a Court to compel a party to make a particular kind of pleading or to amend his pleading so also it is beyond its competence to virtually oblige a party to examine any particularly witness.

8. In view of the accepted position that the application was not filed with care and caution and did not indicate the relevant provisions of law correctly, we think it would be proper to permit the appellant, if he so chooses, to file a fresh application in terms of Order XVIII Rule 17 of the Code and if any such application is filed, the same shall be considered on its own merits in accordance with law uninfluenced by the rejection of the application which was styled as one under Order XVI Rule 3 of the Code. The appeal is allowed to the extent indicated with no order as to costs.