

# RAJASTHAN HIGH COURT

Ramesh Chand

Vs.

Sriram Sharma

Criminal Revision Petition No. 1659 of 1997

(Arun Madan, J.)

27.03.2001

## ORDER

**Arun Madan, J.**

1. Heard learned Counsel for the parties.
2. By way of this revision petition, the petitioner who is plaintiff in the suit challenged the impugned order dated 21.8.1997 passed by learned ADJ No. 1 in Civil Suit No. 60/89 whereby the petitioners' application under Order 16, Rules 6 and 7, Civil Procedure Code was rejected. The matter was at the stage of recording parties evidence before the trial Court.
3. The contention of Mr. P.C. Jain, learned Counsel for the petitioners is that there was a dispute with regard to execution of the partnership between the parties. The petitioners in support of their case wanted to place reliance upon some documents i.e. partnership deed by getting it summoned from the Rajasthan Financial Corporation, Jaipur for short "the RFC" through PW-4 Sri M.M. Aggarwal who happened to be an officer of the RFC. The said document was declined by the trial Court to be taken on record notwithstanding the said witness being present before the Court on the date when the evidence was to be recorded. Consequently, the application moved by the petitioners for permission to adduce the evidence of the said witness was rejected by the trial Court. Hence, the petitioners evidence was closed and the petitioners were deprived of fair opportunity of getting the document i.e. partnership deed brought on record through PW-4 as aforesaid.
4. During the course of hearing, Mr. P.C. Jain, learned Counsel for the petitioners has

stated that the document in question i.e. partnership deed executed between the parties is a very material document which could not be permitted to be taken on record as a result of which, the petitioners' case has seriously been prejudiced. In support of his contention, he placed reliance upon the judgment of the Apex Court in the matter of *Mange Ram v. Brij Mohan*,<sup>1</sup>. In the said decision, the Apex Court held, as under (Para 11) :

"The Court has no jurisdiction to decline to examine the witnesses produced by the party and kept present when the evidence of the party is being recorded and is not closed, and the Court has no jurisdiction to refuse to examine the witnesses who are present in the Court on the short ground that the names of the witnesses were not mentioned in the list filed."

5. I have examined the ratio of the said decision and in my view, it is fully attracted to the instant case.

6. Order 16, Rule 7, Civil Procedure Code authorized the court to direct any witness who is present in Court and whose evidence is material to be recorded, to direct him to produce any document in his possession or power in the matter for recording his evidence.

7. As a result of above discussion, this revision petition is allowed. The impugned order dated 21.8.1997 passed by the learned ADJ No. 1. Alwar is quashed and set aside. If the petitioners move an application for recording the evidence of the witnesses i.e. PW-4 Shri M.M. Agarwal, Officer of RFC for the purpose of proving the partnership deed which allegedly executed between the parties within a period of two weeks from the date of receipt of certified copy of this order before the trial Court, the trial Court shall permit the petitioners to lead the evidence of the above witness in accordance with law.

Revision allowed.

Cases Referred.

1. AIR 1983 SC 925