

# RAJASTHAN HIGH COURT

Mohan Raj

Vs.

Karan Chand

S.B. Civil Revision Petition No. 1414 of 2001

(B.S. Chauhan, J.)

13.03.2002

## JUDGMENT

### **B.S. Chauhan, J.**

1. The instant petition has been filed against the impugned order dated 21.11.2001 passed by the learned Additional District Judge No. 3, Jodhpur in Civil Original Suit No. 152195, dismissing the application filed by the revisionists under Order 33 Rule 2 of the Civil Procedure Code 1908 (for short, "the Code").
2. The application under Order 13 Rule 2 of the Code for taking the documents on record has been rejected by the learned trial court on the ground that the documents sought to be taken on record related to the year 1992; the suit was filed in 1995; issues were framed on 6.4.1998; three witnesses had been examined by the other party; and the said application was filed on 5.9.2001. No sufficient cause was shown by the revisionists for not filing the documents at an early stage.
3. In *Mt. Taibunnissa Begum v. Jagdip Pandey & others*,<sup>1</sup> interpreting the provisions of Order 13, Rules 1 and 2 of the Code, the Court held as under :

"The provision of the said rule gives no discretion to the Court to receive evidence at a later stage than that mentioned, in the previous rule unless good cause is shown to the satisfaction of the Court for non-production thereof. The rule is precise and excludes all documentary evidence produced at a late period unless good cause is shown for its non-production. That rule has been found perhaps in some case, to work a certain amount of hardship and the tendency had, no doubt, been to endow to some extent at all events to enlarge the scope of the rule by allowing the late production of documents in a case where it is quite

obvious that no prejudice would arise to the other party by their late production and where the genuineness of the document sought to be admitted is beyond question."

4. While deciding the said case, reliance has been placed upon the judgment of the Calcutta High Court in *Taleswar Singh v. Bhagwan* <sup>2</sup>

5. In *Bhekdhari Singh & ors. v. Sri Ramchanderji & ors.*, <sup>3</sup> the Court held that provisions of Rules 1 and 2 of Order 13 of the Code were framed to prevent the abuse of process of the Court by giving an opportunity to the litigants to fabricate the documents and file the same at a belated stage. The court was dealing with taking of documents on record relating to Zamabandi in the form of loose-sheets which could be fabricated easily.

6. A Division Bench of the Calcutta High Court, in *Mohini Mohan Saha & ors. v. The Province of Bengal*, <sup>4</sup> dealt with a land acquisition case for determining the market value of the land. The Court held that the provisions contained in Order 13 Rule 2 of the Code were attracted in the case and must be applied. The reason for delay in filing the documents, particularly one in the possession of the Acquiring Authority, must be satisfactory. The application filed for taking the documents on record did not contain any satisfactory reasons explaining the delay and, therefore, there was no occasion for the Court to take the said documents on record allowing the said application. The Court further held as under :-

"The Court must record the reasons for allowing the document, in the possession of the party, to be filed late.... The order on the record also does not indicate any sufficient reasons. We must, therefore, exclude Ex. LL from our consideration."

7. In *Melappa & anr. v. Guramma and ors.*, <sup>5</sup> a Division Bench of the Bombay High Court considered the aforesaid provisions of the Code observing that under Rule 2 of Order 13, documentary evidence in the possession or power of the party, which should have been but has not been produced, will not be allowed to be received at any subsequent stage of the proceedings unless good cause is shown.

8. In *Gyaniram v. Gulabchand*, <sup>6</sup> this Court has taken a view that there can be no justification in accepting the documents at a belated stage and rejection thereof cannot be held to be not a sound exercise of discretion for the reason that the genuineness of the document may be doubted merely on the ground that it had been filed at a belated stage. Similar view has been reiterated in *Ram Lal Dhirta Ram v. The Delhi Municipal*

*Corporation, Delhi*,<sup>7</sup> observing that the Court may legitimately think as to whether the document is coming from the authenticated source or is such as would have been easily prepared for the purpose of litigation and the document may not be allowed to be taken on record at a belated stage.

9. In *Karam Singh v. Jagta & ors.*,<sup>8</sup> the Punjab & Haryana High Court considered a case where the document was produced before starting leading evidence and the reference of the said document had been mentioned in the plaint as well as in the written statement. The Court held that such a document could have been allowed to be taken on record.

10. In *Nanu Ram & ors. v. Vardichand & another*,<sup>9</sup> this Court considered the case wherein application under Order 13 Rule 2 of the Code was filed just after framing the issues and the same stood rejected by the trial Court on the ground that it had not been filed in time. Allowing the revision, this Court observed as under :

"The discretion has, no doubt, to be exercised in a judicial manner... the learned Munsif exercised his discretion improperly in refusing to receive the three documents produced by the petitioners. The reason is that the documents were produced soon after the settlement of issues before evidence on any issue was recorded."

11. In *Gopal v. Heera Chand & ors.*,<sup>10</sup> this Court has held that the documents filed at a belated stage cannot be accepted under Order 13 Rule 2 of the Code as the parties and their witnesses may not be confronted with those documents during their cross-examination and the same cannot be relied upon within the meaning of Order 13 Rule 1 of the Code and in case of any satisfactory explanation for inordinate delay, even for filing a certified copies of the documents, the same cannot be accepted unless those documents can be taken on record on which the party intend to rely and has shown good cause for their non-production earlier.

12. In *Gopika Raman Roy v. Atal Singh*,<sup>11</sup> it has been held that where the rules of exclusion apply and the documents cannot be filed without leave of the court, the leave should not ordinarily be refused where the documents are official records of undoubted authenticity, which may assist the court to decide rightly the issue before it.

13. But observations made in the aforesaid case were not followed in *Kanda & ors. v. Wagh*,<sup>12</sup> wherein it was held as under :

"It would be erroneous to read these observations as implying that there is no

discretion left in a trial court when it is a matter of admitting public records at a late stage. The Court has a discretion and while generally speaking it will be a wise exercise of the discretion to admit such evidence, the question must be decided in each case in the light of the particular circumstances... apparently neither the appellants nor their counsel had consulted the revenue records before filing the suit and ignorance of entries therein would not provide a sufficient cause for the delay in making the application.... the subordinate judge exercised a wise discretion in refusing to admit additional evidence....."

14. In *Madan Gopal Kanodia v. Mamraj Maniram & ors.*,<sup>12</sup> the Hon'ble Apex Court considered the case where the application under Order 13 Rule 1 of the Code was filed by the plaintiff before the evidence had started. The Apex Court held that as it had been done before the evidence had been started, the defendants cannot be said to have been taken by surprise or had suffered any prejudice by production of the said documents and the trial Court has rightly allowed the application. The said provisions did not provide for any particular ritualistic formula in which the order of the Court has to be passed. The object of the provision is merely to prevent belated production of a document so that it may not work prejudicial to the other side. The said provision clearly clothes the Court with discretion to allow production of document if it is satisfied that good cause is shown to its satisfaction.

15. In *Billa Jagan Mohan Reddy & another v. Billa Sanjeeva Reddy & another*,<sup>13</sup> the Apex Court held that documents can be filed at a belated stage furnishing explanation of delay and the issue whether delay can be condoned should be considered not applying the rigorous test as one applicable under Section 5 of the Limitation Act. Moreso, documents must be relevant to decide the real issue in controversy and court must feel that the same are required to be accepted in the interest of justice.

16. In *Harnam Singh v. Raksha Rani & ors.*,<sup>14</sup> the Hon'ble Supreme Court held that documents may be taken on record but its copy should be served upon the other side and the latter should be given an opportunity to meet the same by filing reply/affidavit etc.

17. Order 13 Rule 2 of the Code specifically provides that no documents can be taken on record at any subsequent stage of the proceedings unless the party intends to rely upon them and shows good cause for their non-production earlier. Thus, if a party files an application to take the documents on record without furnishing any satisfactory explanation of inordinate delay, the Court must refuse to admit the documents on record.

18. The case requires to be considered in the light of the aforesaid settled legal propositions. Admittedly, the documents, which the revisionists wanted to be taken on record, related to the year 1992. Revisionists had not denied the factum of their knowledge about the said documents while the suit was filed in 1995; issues had been framed on 6.4.1998; three witnesses had already been examined by the other side when revisionists filed the said application. No satisfactory explanation has been furnished for not filing the documents earlier; nor the revisionists have submitted that filing of the documents at such a belated stage had not caused any prejudice to the other party, or the documents would not have any bearing on the evidence which had already been recorded. For want of such pleadings and submissions, the impugned order does not seem to be a case of improper exercise of jurisdiction by the trial Court.

19. The revisionists have utterly failed to explain the inordinate delay in filing the said application. Thus, it cannot be said by any stretch of imagination that the learned trial Court has committed any material irregularity in exercise of its jurisdiction while passing the impugned order.

20. Thus, the revision being devoid of merit, is hereby dismissed. There shall be no order as to costs.

Petition dismissed.

Cases Referred.

1. AIR 1924 Pat 517
2. Das, (1907) 12 CWN 312
3. AIR 1931 Pat 275
4. AIR 1951 Cal 246
5. AIR 1956 Bom 129
6. AIR 1961 RAJ 21
7. AIR 1973 Delhi 112
8. AIR 1982 Punjab and Haryana 51
9. AIR 1978 RAJ 138
10. AIR 1994 RAJ 110
11. AIR 1929 PC 99
12. AIR 1976 SC 461
13. 1994(2) RRR 456 (SC): 1994) 4 (SCC 659)