

RAJASTHAN HIGH COURT

Shyam Lal

Vs.

Khandu Ram
(Dr. B.S. Chauhan, J.)

16.04.2002

ORDER

Dr. B.S. Chauhan, J.

1. This revision has been filed against the order dated 19-3-2002 rejecting the application of the petitioner under Order 18, Rule 17-A of the Civil Procedure Code, 1908 (for short, "the Code").

2. Petitioner had filed an application under the said provisions to permit him to examine the witnesses who could prove the signatures of attesting witnesses on the document. The same has been rejected by the learned trial Court on the ground that there was no occasion for the Court to allow the same as the petitioner had not been diligent in prosecution of his case.

3. Admittedly, the suit was filed in 1976; issues were framed on 29-10-77; recording of statement of plaintiff's witnesses started in 1980 but no evidence was led, however as he failed to examine the witnesses, the last opportunity was given to him vide order dated 17-8-2001. Vide order dated 10-12-2001, the evidence of the petitioner/plaintiff was closed on his own statement that he did not want to examine any other witness. On 20-2-2002, he filed the application under Order 18, Rule 17-A of the Code to the effect that as the writer of the mortgage-deed had expired and the attesting witnesses were also not available, he was in search of some persons who could verify the signatures of the attesting witnesses. Admittedly, the period of twenty-six years has elapsed since the date of filing of the suit.

4. There is nothing on record to show as on what date the writer of the mortgage-deed died and when the attesting witnesses had expired. No satisfactory explanation has

been furnished as why the evidence of the petitioner/plaintiff could not be recorded, except a bald statement that sometime the Presiding Officer was not available and sometime the adjournment was sought. Plaintiff in the application, it has not been submitted as who was the person, whom he wanted to examine to prove the signatures of those attesting witnesses. What has been stated therein is that the petitioner/plaintiff was in search of those persons. The matter relates only to recovery of a sum of Rs. 6100/- under the mortgage deed. It cannot be said to be a case where it may be held that petitioner has prosecuted his case diligently.

5. The provisions of Order 18, Rule 17-A of the Code were inserted by the legislature vide Amendment in 1876. The purpose of such an amendment seems to be to avoid filing of application under Order 41, Rule 27 at the appellate stage giving an opportunity to the parties to lead additional evidence, if any, even at a belated stage in the trial Court for the reason that there may be certain evidence which may have come in existence subsequent to examination of the witnesses or which could come to their knowledge, in spite of due diligence, at a later stage, but the mandatory requirement of the provision is that the Court must be satisfied that the party had prosecuted its case with due diligence and the evidence was not within its knowledge or could not be produced by him.

6. A party has to show good and sufficient reasons as what prevented him in adducing the evidence at an early stage when the evidence was being recorded. This Court in *M/s. Pabudan Hiralal v. Shri Mahesh Industries*,¹ while dealing with the similar situation, held that "no such permission should be granted by the Court unless there are cogent reasons for doing so."

7. Similarly, in *Chairman, Notified Area Council, Bhanjanagar v. Lingaraju Patra*,² the Orissa High Court held that such a relief cannot be claimed as a matter of right. It is not the privilege of the party, rather it is a discretion of the Court to be exercised judiciously in the facts and circumstances of a case. Similar view has been reiterated by the Allahabad High Court in *Altaf Hussain v. Nasreen Zohra*,³

8. In *Kanhaiya Lal Manchandiya v. Lalchand Baddani*,⁴ while interpreting the provisions of Order 18, Rule 17-A of the Code, this Court held that the Court may permit a party to produce evidence at a belated stage under the said provisions if either of the ingredients of the provision is fulfilled. The Court held that the expression

"could not be produced", goes to show that there was unavoidable circumstances, on account of which the party failed to produce the evidence. It also shows that the party must be diligent throughout but on account of unavoidable circumstances, it could not succeed and failed to produce the evidence. The Court observed as under:-

"Thus, the words 'could not be produced' cannot be equated with the voluntarily waiving production of evidence under the impression that evidence is not necessary to be led."

9. A Division Bench of Punjab and Haryana High Court, in *Kaura Ram v. Gobind Ram*,⁵ held that the Court must be satisfied that there were cogent reasons, for which any evidence could not be produced by the party at the time when it was leading evidence. The Court, if satisfied, may permit that party to produce the evidence at a later stage on such terms as may appear to it to be just.

10. In *Kamleshwariprasad Singh v. Suja Singh*,⁶ the Patna High Court held that such an application can be entertained. While dealing with the issue, the Court held as under :-

"The party has to make a good cause and has to satisfy the Court of the reasons which prevented him from producing the same at the proper time and if the Court is satisfied then in that case, the Court may permit the party to produce that evidence even at a later stage on such terms as it may appear to it to be just."

11. Similar view has been reiterated by the Patna High Court in *Adalat Choudhary v. Satan Choudhary*,

12. It is settled legal proposition that in such a matter, the satisfaction reached by the Court below and the finding recorded by it; whether there was unavoidable circumstance or not, being a finding of fact, does not require to be interfered with by the revisional Court. (Vide *Arjun Singh v. Mohindra Kumar*,⁸ *Manindra Land and Building Corporation Ltd. v. Bhutnath Banerjee*,⁹ and *Davinder Pal Sehgal v. Pratap Steel Rolling Mills (P) Ltd.*¹⁰

13. In *Smt. M. M. Amonkar v. Dr. S. A. Johari*,¹¹ the Hon'ble Apex Court dealt with the issue observing as under :-

".....but unless the reasons given by the learned trial Court could be said to be moon-shine, flimsy or irrational, the rejection of the application cannot be dubbed as suggestive of non-judicial approach or bias or partiality on his part and in those circumstances, no interference is called for in exercise of revisional power."

14. Thus, in view of the above, as no satisfactory explanation has been furnished as to why he could not produce the said witnesses earlier, application has rightly been rejected.

15. The revision is dismissed without notice to the other side. As the matter is pending for last twenty-six years, the learned trial Court is requested to conclude the trial expeditiously. A copy of this Court be sent by the Registry to the learned Additional Civil Judge (JD) No. 2, Bikaner.

Revision dismissed.

Cases Referred.

1. AIR 1970 Raj 59
2. AIR 1974 Ori17
3. AIR 1978 All 515
4. AIR 1988 Raj 181
5. AIR 1980 Punjab and Haryana 160
6. AIR 1984 Pat 152
7. AIR 1984 Pat 223
8. AIR 1964 SC 993
9. AIR 1964 SC 1336
10. (2002) 3 SCC 156
11. AIR 1984 SC 931