

RAJASTHAN HIGH COURT

Laxman Das

Vs.

Deoji Mal

Revn. Petn. No. 750 of 2002

(B.S. Chauhan, J.)

02.09.2002

ORDER

B. S. Chauhan, J.

1. The instant revision has been filed against the order dated 19-8-2002, by which the incomplete examination-in-chief of a witness had been allowed to be completed by filing an affidavit.

2. The facts and circumstances giving rise to this case are that in the *Deoji Mal v. Laxman Das*, ¹ the examination-in-chief of PW 8 Murli was recorded but could not be completed for paucity of time on 16-3-2002. When he again appeared on 17-4-2002, some questions were asked in examination-in-chief, but there had been dispute as to whether such questions can be asked and the same could not be concluded. Same position remained on 16-5-2002, 20-5-2002, 1-6-2002 and 22-7-2002 and the remaining examination-in-chief was filed in the form of an affidavit by the plaintiff-respondent. The petitioner-defendant sought time to argue on the acceptability of an affidavit for the purpose of concluding the examination-in-chief and ultimately the case was adjourned time and again as is evident from the order-sheets dated 8-7-2002, 6-8-2002 and 17-8-2002. The impugned order was passed on 19-8-2002 rejecting the objection of the petitioner-defendant and accepting the affidavit. Hence, this revision.

3. Mr. Panwar, learned Counsel for the petitioner-defendant has submitted that as the original suit relates to eviction of the tenant under the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, whatever the judgment and decree to be passed by the learned trial Court shall be appealable and the affidavit, as

provided under Order 18, Rule 4 of the Civil Procedure Code (Amendment) Act, 1999 (for short, "the Act, 1999") cannot be accepted and the procedure prescribed under Order 18, Rule 5 has to be followed, therefore, the impugned order is liable to be set-aside.

4. On the other hand, Mr. Soni, learned counsel for non-petitioner/plaintiff has submitted that as the Order 18, Rule 4 has been inserted by the Amendment Act in order to meet the menace of delay, the impugned order does not require any interference.

5. I have considered the rival submissions made by the learned Counsel for the parties and perused the record.

6. Order 18, Rule 4 was inserted by the New Act which came into force w.e.f. 1-7-2002. It provides for recording the examination-in-chief, in every case, of a witness on affidavit and further the cross-examination and re-examination of the witness either by the Court or by a Commissioner appointed by it. Order 18, Rule 5 remains unamended as it was introduced by the Civil Procedure Code (Amendment) Act, 1976, which came into force w.e.f. 1-2-1977 providing that in the cases in which the order to be passed by the Court is appealable, the evidence is to be recorded by the Court itself in writing. Order 18, Rule 13 reads as under :-

"Memorandum of evidence in unappeal-able cases- In cases in which an appeal is not allowed, it shall not be necessary to take down or dictate or record the evidence of the witnesses at length; but the Judge, as the examination of which witness proceeds, shall make in writing, the dictate directly on the typewriter, or cause to be mechanically recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the Judge or otherwise authenticated, and shall form part of the record."

7. Thus, if all the provisions are read together, it appears that the legislative intent should have been that if the ultimate orders to be passed by the Court are not appealable, the evidence or examination-in-chief may be taken on affidavit or by recording substance thereof by the Court. So far as the savings clause of the New Code, 1999 or the Civil Procedure Code (Amendment) Act, 2002 are concerned, there is nothing in respect of the provisions of the cases which may be governed by the

provisions of Order 18 Rule 4. This being Procedural Law, it will be operative prospectively from the date of enforcement of the provisions, i.e. 1-7-2002.

8. The Statement of Objects and Reasons for bringing the amendment in this respect in the Act of 1999 reads as under:-

"As the maximum time is consumed in recording the oral evidence by the Courts which causes delay in disposal of cases, it is proposed to reduce such delay by making provisions for filing of examination-in-chief of every witness in the form of an affidavit. For the cross-examination and re-examination of the witnesses, it is proposed that it shall be recorded by the Commissioner to be appointed by the Court and the evidence recorded by the Commissioner shall become part of record of the suit."

9. Undoubtedly, the Legislature had been aware of the delay caused in recording of evidence and wanted to enact a meaningful provision to curb the same.

10. Order 18, Rule 4 provides for recording of examination-in-chief by affidavit in every case, but R. 5 thereof remains unchanged which provides for recording of evidence by the Court in case the ultimate judgment and decree to be passed by the Court is appealable. To provide the harmonious construction of these provisions, Order 18, Rule 4 is to be read with Order 18, Rule 13, but as there is no change in Order 18, Rule 5, it is difficult to hold that even in cases where the ultimate order shall be appealable, the evidence can be recorded as provided either under Order 18, Rule 4 or Order 18, Rule 13. Giving any other interpretation would render R. 5 thereof nugatory and such an interpretation is not permissible. What to talk of a provisions, even a word in the Statute cannot be construed as a surplusage. No word can be rendered ineffective or purposeless. Courts are required to carry out the legislative intent fully and completely. While construing a provisions, full effect is to be given to the language used therein, giving reference to the context and other provisions of the Statute. By construction, a provision should not be reduced as a "dead letter" or "useless lumber. An interpretation which renders a provision an exercise in futility, should be avoided, otherwise it would mean that enacting such a provision in subordinate legislation was" an exercise in futility" and the product came as a "purposeless piece" of legislation and provision had been enacted without any purpose and entire exercise to enact such a provision was "most unwarranted besides being uncharitable." (Vide *M. V. Elisabeth v. Harwan Investment and Trading Pvt. Ltd.*,² and *Institute of Chartered Accountants of India v. Price Water-house and another*,

Martin Burn Ltd. v. Corporation of Calcutta,³ *Patel Chunibhai Deji bhai v. Narayanrao K. Jambekar*,⁴ *Sultana Begum v. Prem Chand Jain*⁵ *State of Bihar v. Bihar Distillery Ltd.*,⁶ *South Central Railway Employees Co-operative Credit Society Employees' Union, Secunderabad v. Registrar of Co-operative Societies*,⁷ *Subash Chander Sharma v. State of Punjab*,⁸ *Bharathidasan University v. All India Council for Technical Education*¹⁰ and *Mor Modern Co-operative Transport Society Ltd. v. Financial Commissioner and Secretary to Govt. of Haryana*,¹¹ 11. Basic rule of interpretation requires that legislative intent must be assessed in its proper perspective and from the words used in the Statute and considering the context in which the provision has been enacted. (Vide *Chandra Prakash Tiwari v. Shakuntala Shukla*,¹²

12. The language of the Act is very clear and it does not require any interpretation because there is no ambiguity in it. In case the language of a Statute is unambiguous, there can be no need to interpret it or examine the intent or object of the Act and the Courts must give effect to it unless it leads to an absurdity or injustice. It is well recognized canon of interpretation that provisions curbing the jurisdiction of the Court or Authority must normally receive strict interpretation unless the statute or the context requires otherwise. (Vide *Abdul Waheed Khan v. Bhawani*,¹³ *Sachida Nand Singh v. State of Bihar*,¹⁴. *Jagdish Ch. Patnaik v. State of Orissa*,¹⁵ and *Arul Nadar v. Authorised Officer, Land Reforms*,¹⁶

13. When the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. It has been hitherto uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods or mode of performance are impliedly and necessarily forbidden. (Vide *Taylor v. Taylor*,¹⁷ *Nazir Ahmed v. King Emperor*,¹⁸ *Deep Chand v. State of Rajasthan*,¹⁹ *Patna Improvement Trust v. Smt. Lakshmi Devi*,²⁰ *State of Uttar Pradesh v. Singhara Singh*,²¹ *Nika Ram v. State of Himachal Pradesh*,²² *Ramchandra Keshav Adke v. Govind Joti Chavare*,²³ *Chettiam Veetil Ammad v. Taluk Land Board*,²⁴ *State of Bihar v. J.A.C. Saldanna*,²⁵, *A. K. Roy v. State of Punjab*,²⁶ *State of Mizoram v. Biakchhawna*,²⁷ *J. N. Ganatra v. Morvi Municipality Morvi*,²⁸ *Babu Verghese v. Bar Council of Kerala*,²⁹ and *Chandra Kishore Jha v. Mahavir Prasad*,³⁰

14. The aforesaid settled legal proposition is based on a legal maxim "Expressio unius est exclusion alterius", meaning thereby that if a statute provides for a thing to be done

in a particular, then it has to be done in that manner and in no other manner and following other course is not permissible. This maxim has consistently been followed, as is evident from the cases referred to above. A similar view has been reiterated in *Chandra Kishore Jha v. Mahavir Prasad*,³¹ *Haresh Dayaram Thakur v. State of Maharashtra*,³² *Delhi Administration v. Gurdip Singh*,³³ *Dhananjaya Reddy v. State of Karnataka*,³⁴ and *Commissioner of Income Tax, Mumbai v. Anjum M. H. Ghaswala*,³⁵

15. The provisions require harmonious construction and determination of legislative intent for the reason that it is well settled rule of interpretation that the Courts should lean to the interpretation which would avoid inconsistency between the different provisions of the statutes. The Courts are under the duty to construe the statutes in such a way that they are in harmony with each other. Therefore, the conflict in the statutory provisions must be harmonized considering the object and purpose of the laws under consideration. The harmonious construction is necessary so as to eliminate any conflict without rendering any provisions of the statute superfluous. Moreso, it is necessary to avoid a hear-on collusion as it cannot be assumed lightly that the legislature gave with one hand and took away with the other. One provision of a statute cannot be used to defeat the another unless it is impossible to reconcile the same. The essence of the harmonious construction is to give effect to both the provisions. Thus, interpretation cannot be made in such a way that it may render one of the statutory provision otios. (Vide *Corporation of the City of Victoriya v. Bishop of Vancouver Island*,³⁶ *Babulal Bhuramal v. Nandram Shivram*,³⁷ *J. K. Cotton Spinning and Weaving Mills Co. Ltd. v. State of U.P.*,³⁸ ; *Sarwan Singh v. Kasturi Lal*,³⁹ ; *Mysore State Road Transport Corporation v. Mirja Khasim Ali Beg*⁴⁰ *Vaddeboyina Tulasamma v. Vaddeboyina Sesha Reddi*,⁴¹ *Punjab Beverages Pvt. Ltd. v. Suresh Chand*,⁴² *Commr. of Income Tax v. National Taj Traders*,⁴³ *University of Allahabad v. Amritchand Tripathi*,⁴⁴ *Krishan Kumar v. State of Rajasthan*,⁴⁵ and *Sultana Begum v. Prem Chand*,⁴⁶

16. Therefore, in view of the above, the words "in every case", contained in R. 4 of Order 18 have to be understood in a limited sense that every case wherein the ultimate order is not appealable, and by no means, it can take in its ambit the orders which would be appealable. In view of above, the position which emerges is that in cases where the final orders to be passed by the Court would not be appealable, the discretion has been conferred upon the Court to accept the examination-in-chief in the form of affidavit as provided under Order 18, Rule 4; or to record the substance

thereof by the Court itself as provided under Order 18, Rule 13. But in cases where orders would be appealable, the evidence is to be recorded strictly as provided under Order 18, Rule 5.

17. There is another aspect of the matter. From the order sheets of the case, it appears that petitioner-defendant had been trying to cause delay in an unjustified manner and in such an eventuality, there is no obligation on the part of the Court below to adjourn the case. Adjournment without compelling circumstance cannot be justified as it causes great injustice and hardship to the other party. The Hon'ble SC had always emphasized in early disposal of the matter and deprecated the practice of delay in the trial. The adjournment cannot be given merely by asking, rather when the witnesses are in the Court, they must be examined except for specific reasons which must be recorded by the Court. Inconvenience of an Advocate cannot be a ground for adjournment. Seeking several adjournments at long intervals does not serve the purpose, rather causes the prejudice to the Court and the opposite party. (Vide *Bipin Shantilal Panchal v. State of Gujarat*,⁴⁷ and *State of U.P. v. Shambhu Nath Singh*,).⁴⁸

18. In *Re Sanjiv Dutta*, (1995) 3 SCC 619, the Hon'ble Apex Court observed as under :-

"Some members of profession have been adopting perceptively casual approach to the practice of the profession as is evident from their absence when the matters are called out, the filing of incomplete and inaccurate pleadings many times even illegible and without personal check and verification, the non-payment of Court fees and process fees, the failure of removing office objections, the failure to take steps to serve the parties et al. They do not realize the seriousness of these acts and omissions. They do not only amount to the contempt of the Court but do positive disservice to the litigants and create embarrassing situation in the Court leading to avoidable unpleasantness and delay in the disposal of the matter..... If the profession is to survive, a judicial system has to be vitalised. No service will be too small in making a system efficient, effective and credible. The casualness and indifference with which some members practice the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If the people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of the justice as a whole. The

present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from out-side. It is for the members of the profession to introspect and take the corrective steps in time and also spare the Court the unpleasant duty."

19. Similarly, in *N. G. Dastane v. Shrikant S. Shivde*,⁴⁹ the Hon'ble Apex Court observed as under (Para 20) :-

"If the advocate has no unavoidable inconvenience, it is his duty to make other arrangements for examining the witnesses who are present in the Court. Seeking adjournments for postponing the examination of witnesses who are present in the Court even without making other arrangements for examining such witnesses is a dereliction of an advocate's duty to the Court as they would cause much harassment and hardship to the witnesses. Such dereliction if repeated would amount to misconduct of the advocate concerned. Legal profession must be purified from such abuses of the Court procedures. Tactics of filibuster, if adopted by an advocate, is also a professional misconduct."

20. Similar view has been reiterated by the Hon'ble SC in *General Manager, Telecom v. G. Mohan Prasad*, and by this Court in *Bhola Singh v. Prescribed Authority*,⁵¹

21. It is in this view of the matter that the Code has been amended with effect from 1-7-2002 and Order 17 Rule 1 of the Code puts an embargo on the power of the Court to grant adjournments more than three times to a party in the trial Court. Rule 2 thereof further provides for imposition of cost while granting further adjournment. Therefore, the Courts have to implement and give effect to the provisions of the amended Code and should not adjourn the case, even on being asked by the advocate, in violation of the said statutory provisions.

22. In view of the above, the revision is allowed. The impugned order dated 19-8-2002 is set-aside and the learned trial Court is directed to record evidence under Order 18, Rule 5 of the Code. In order to avoid further inordinate delay, the parties are directed to appear before the learned trial Court on 13-9-2002 and on that date, it shall fix-up a date for recording further evidence in accordance with law and conclude the trial expeditiously as the suit is pending for about a decade and no adjournment shall be granted to either of the parties unless there are compelling circumstances to do so.

Petition allowed.

Cases Referred.

1. Suit No. 279/1993
2. AIR 1993 SC 1014
3. AIR 1966 SC 529
4. AIR 1965 SC 1457
5. (1997) 1 SCC 373
6. AIR 1997 SC 1511
7. (1998) 2 SCC 580
8. (1999) 5 SCC 171
9. (2001) 8 SCC 676
10. (2001) 8 SCC 676
11. (2002) 6 SCC 269
12. (2002) 6 SCC 127
13. AIR 1966 SC 1718
14. (1998) 2 SCC 493
15. (1998) 4 SCC 456
16. (1998) 7 SCC 157
17. (1875) 1 Ch. D. 426
18. AIR 1936 PC 253
19. AIR 1961 SC 1527
20. AIR 1963 SC 1077
21. AIR 1964 SC 358
22. AIR 1972 SC 2077
23. AIR 1975 SC 915
24. AIR 1979 SC 1573
25. AIR 1980 SC 326
26. (1986) 4 SCC 326
27. (1995) 1 SCC 156
28. AIR 1996 SC 2520
29. (1999) 3 SCC 422
30. (1999) 7 JT (SC) 256
31. (1999) 8 SCC 266
32. (2000) 6 SCC 179

33. (2000) 7 SCC 296
34. (2001) 4 SCC 9
35. (2002) 1 SCC 633
36. AIR 1921 PC 240
37. AIR 1958 SC 677
38. AIR 1961 SC 1170
39. AIR 1977 SC 265
40. AIR 1977 SC 747
41. AIR 1977 SC 1944
42. AIR 1978 SC 995
43. AIR 1980 SC 485
44. AIR 1987 SC 57
45. AIR 1992 SC 1789
46. AIR 1997 SC 1006
47. AIR 2001 SC 1158
48. AIR 2001 SC 1403
49. AIR 2001 SC 2028
50. (1999) 6 SCC 67
51. AIR 1999 Raj 242