
(1984) 11 BOM CK 0071

In the Bombay High Court

Case No : Civil Revision Application No. 393 of 1984

Hari Shrawan Sutar

APPELLANT

Vs

Ramdas Tukaram Patil

RESPONDENT

Date of Decision : 12-11-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 3A

Citation : (1985) 2 BomCR 290 : (1985) MhLj 197

Hon'ble Judges : B.A. Masodkar, J

Bench : Single Bench

Advocate : D.S. Sawant, for the Appellant; S.R. Atre, for the Respondent

Judgement

B.A. Masodkar, J.—This civil revision application question an order permitting a special Mukhatyar one Dr. D.M. Patil to be examined after the respondent plaintiff had taken the oath and all the dates of further hearing was unable to attend the Court because of his illness that was certified to be so by a medical practitioner.

2. In this Court, Mr. Sawant, the learned Counsel appearing in support of the civil revision application, relied on the provisions of Order 18, Rule 3-A of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") and submitted that this course was contrary to that rule and that the order impugned should be set aside.

3. Now, this civil revision application is pending in this Court for more than three months and by the time this is being disposed of, surely, the respondent-plaintiff should be available, unless prevented by some other reason.

4. The provisions of Rule 3-A of Order 18 of the Code were inserted by Amending Act No. 104 of 1976 to the Code. That lays down a Rule of law with regard to the order of witnesses to be examined in the Court. It applied to both the plaintiff as well as the defendant. In cases where a party, either plaintiff or defendant, wishes to appear as a witness, the provisions of this rule require that such a party would appear for giving evidence before any other witness is examined.

The Rule has been couched in mandatory terms and would, ordinarily, govern the matter of tendering evidence. When the rule is required to be departed from, the Court has to record the reasons and permit such a party to be kept back for the examination as a witness. The reasons in such matter may be various, including the non-availability of the plaintiff. Though the provisions of Rule 3-A of Order 18 of the Code are salutary and intended to be applied as such so as to achieve the object thereof, the Rule itself confers jurisdiction upon to Court to permit such a party to appear and examine himself at a later stage. The purpose of the Rule appears to be to have the evidence of the party first. It is the party who can unfold the case. Such unfolding by other evidence should follow after the party is examined. If party be the witness, the amended provision confers primacy upon it and enacts a priority in that regard. Ordinarily, the same will have to be followed.

5. In other words, the Rule is in two parts, firstly, making it obligatory on the party to examine himself as a witness, if so desired, before any other witness is examined, and secondly, conferring authority on the Court to change this modality for the reasons to be recorded and permit such a party to be examined at a later stage. By itself, the Rule cannot be treated to be directive. On the other hand, the Rule will have to be applied when a party wishes to appear as a witness. The provisions of Order 18 of the Code, which deal with hearing of the suit and examination of witnesses, do not indicate that such a party who was obliged to appear first and examine himself before the other witnesses would not be permitted thereafter to examine as a witness at a later stage. No prohibition expressly is enacted in this regard nor any statutory consequences are indicated. On the other hand, it is provided in express terms that show that the Court possesses ample power to permit such a party to examine at a later stage as a witness. What would be the effect of such a conduct of the party and how that conduct will be appreciated is not the subject-matter of the Rule, the position being left to the judicial appreciation of such conduct. The law enacts and lays down the normal rule, in that the party as a witness must offer itself as a witness before any other witness is examined. This salutary rule can be departed by leave of the Court for which reasons are required to be recorded. Once such reasoned order is made, the examination of such a party at a later stage would be quite regular and keeping with the rule. It follows from this that but for such a leave, the party would not be free to examine itself as a witness at a later stage. To this extent, the Rule will have to be treated as a mandatory. Once the reasons are recorded, examination of a party at a later stage is quite permission (See. *Paramananda Fatesh Singh and Others Vs. Labanya Bewa and Others*, , and *Kwality Restaurant, Amritsar Vs. Satinder Khanna*,

6. That being the position, the impugned order cannot be interfered with in revision. *Ex facie*, the respondent-plaintiff was ill and under those circumstances, he could be permitted to examine other witnesses before he is examined. As, however, the matter is still at that stage, there being stay operative, it would be in keeping with the principles underlying Order 18, Rule 3-A of the Code that, if

respondent-plaintiff is available, he is examined first and thereafter his other witnesses.

7. With these observations Rule discharged with no order as to costs.