

(1990) 09 MP CK 0041
In the Madhya Pradesh High Court
Case No : C.R. No. 149 of 1990

Harsh Wood Products Pvt. Ltd. and Another	APPELLANT
Vs	
Sant Prakash Gupta and Others	RESPONDENT

Date of Decision : 06-09-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 2, 115

Citation : (1990) JLJ 778 : (1991) 36 MPLJ 32 : (1991) MPLJ 32

Hon'ble Judges : K.K. Verma, J

Bench : Single Bench

Advocate : N.K. Modi, for the Appellant;

Final Decision : Dismissed

Judgement

K.K. Varma, J.

Yesterday, an adjournment was given to him to enable him to cite case law laying down the appropriate conditions for making an order Under Order 19, Rule 2, Civil Procedure Code.

Shri Modi was heard fully on the question of admission along with case law cited by him.

This is a revision u/s 115 of the CPC from an order dated 14-7-1990 of the District Judge, Morena, in C.S. No. 5-B/87 granting a prayer of the plaintiff, the Bank of India, to cross-examine defendant No. 2 Harsh Prakash Gupta on his affidavit, admittedly filed in the matter arising out of the plaintiffs application Under Order 40, Rule 1, Civil Procedure Code.

The background is as follows :

One Ganesh Prasad Dubey filed an affidavit in support of the plaintiffs application Under Order 40, Rule 1, Civil Procedure Code. The present applicants made an application Under Order 19, Rule 2, CPC for an order to permit them to cross-examine deponent Ganesh Prasad Dubey. That application was rejected. The

present applicants filed a Civil Revision No. 64/1988. Vide the final order dated 2-1-1990, the Court allowed the revision petition and directed the present applicants to-renew their prayer for cross-examination. The applicants renewed, their prayer and the Court permitted them to cross-examine Ganesh Prasad Dubey on, 14-7 1990 when, on an oral request made on behalf of the plaintiff the learned trial Judge granted the permission to cross-examine, applicant No. 2 Harsh Prakash Gupta on his affidavit dated 15-2-1988 and fixed 30th, July 1990. It is this order which has led to the present revision petition.

The applicants' learned counsel has submitted that the learned trial Judge's order is interferable in revision because he made the, order without insisting upon a written application and without recording good or, sufficient reasons for granting the oral prayer made on behalf of the plaintiff.

Order 19 Rule 2, CPC runs as follows "

"2. Power to order attendance of deponent for cross-examination.

(1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent

(2) Such attendance shall be in Court unless the deponent is exempted from personal appearance in Court or the Court" otherwise directs."

The plain meaning is that a party may give evidence, by affidavit upon any application. The choice has been left to the party to give" evidence by affidavit . Here the rule does not speak of any order or direction by a Court to a party to give evidence by affidavit. It is for a party to avail of the liberty of filing an affidavit upon any application. It is also clear that the Court has been given a discretion to order the attendance for cross-examination of the deponent, if so desired by the opposite party. Here, there is no requirement that the party seeking an order for the attendance of the deponent of the opposite party) for cross-examination has to file an application in writing. At the same time, it has been left in the discretion of the Court whether or not to order the attendance for cross-examination of such deponent. It is settled rule of practice that a discretion given to a Court has to be exercised judicially and judiciously, that is, not capriciously or arbitrarily.

In the instant case, the present applicants fought bitterly for their right to cross-examine the plaintiff- deponent so as to advance their case in the matter of the plaintiff's application for appointment of a receiver. Hence the rejection of the plaintiff's prayer to cross-examine applicant No. 2 Harsh Prakash Gupta would have attributed to an exercise of discretion in an arbitrary and capricious manner unless the order could have been justified on substantial grounds. Hence, the trial Court's mention of the fact that the plaintiff-deponent having been cross-examined on his affidavit, justified the ground of the interest of justice demanding this similar opportunity to the plaintiff "to cross-examine applicant

No. 2 Harsh Prakash Gupta.

What is more Section 115 CPC leaves a very small margin of interference to the revisional Court. Sub-section (1) of Section 115 says that the revisional Court has to be satisfied that the subordinate court has exercised a jurisdiction so vested in it by law or that it had failed to exercise a jurisdiction so vested or that it acted in the exercise of its jurisdiction illegally or with material irregularity.

Even after being satisfied on any of these grounds there is a mandate to the High Court in the proviso to Sub-section (1) of Section 115 that the High Court shall not vary or reverse any order made except where among other things the order if allowed to stand would occasion a failure of justice or cause irreparable injury to the applicants.

In this case the three grounds mentioned in clause (a), (b) and (c) of Sub-section (1) of Section 115, have not been made out. Besides there is nothing that the impugned order would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

I will now deal with the case law cited by the applicant's learned counsel.

The case of Haroobhai v. State AIR 1967 Guj 229, related to a proceeding under Article 226 of the Constitution wherein the Court stated that none of the points was of so much consequence as would induce them to order the cross-examination of the fourth respondent. Hence this ruling is of no help to the applicants.

In Champa v. Hiralal 1984 MPWN 478, the trial Court had made an order that the parties to the suit evidence in Court on the question of possession raised in an application for temporary injunction. It was that order which was set aside in the revision. The provision contained in Order 29, Rule 2 CPC was not at all relevant to the main issue in the revision. No doubt, the Court gave a liberty to the parties to make a prayer to the Court to permit them the right of cross-examination of the opponent's deponents. Hence this ruling is also of no help to the applicants.

In Samirmal vs Kailash Chandra 1982 MPWN 368 the defendant's prayer for a right to cross-examine the opponent on his affidavit was granted. When the plaintiff wanted a similar order on his own application Under Order 19 Rule 2 CPC the court said that the consideration of the application would be deferred till cross-examination of the plaintiff-deponent was over. Against this order, the plaintiff came up in revision. It was held that the case did not amount to a case decided so that a revision application may be regarded to be maintainable. It was also held that the order did not occasion any failure of justice or it was likely to cause any irreparable injury to the plaintiff. Hence, this ruling is also of no help to the applicants.

In Patwa Abhikaran v. North West Automobiles 1988 (I) MPWN 183, the defendant filed a revision when his application Under Order 11 Rule 14 CPC was

rejected in part. The application had been filed by him so as to enable him to cross-examine the plaintiff (on his affidavit) Under Order 19 Rule 2 Civil Procedure Code. The High Court held that the application was rightly rejected. Hence, this ruling is also of no help to the applicants.

In *Guttilal v. Madras Chakkar Badi Factory* 1960 LLJ 47, it was held that there is no obligation on the Court to order cross-examination Under Order 19, Rule 2 of the Civil Procedure Code. The principle was that such cross-examination in most cases defeats the object of the interlocutory applications.

Now, in the case before me, the present applicants themselves had fought for their right upto the High Court and the matter had taken several months. In that context, an adjournment of the case from 14-7-1990 to 30-7-1990 could not be regarded as delay; more so, when the delay was in the disposal of the plaintiff's application and the delay in the suit itself. So this ruling is also of no help to the applicants.

In the result, I find that there is no merit in the revision petition. It is dismissed summarily.