

(1999) 09 MP CK 0053

In the Madhya Pradesh High Court

Case No : Civil Revision No. 899 of 1997

Indore Development Authority, Indore

APPELLANT

Vs

Satyapal Anand and Another

RESPONDENT

Date of Decision : 09-09-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12, Order 11 Rule 21

Citation : AIR 2000 MP 74 : (2001) ILR (MP) 1579 : (2000) 2 MPLJ 229

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : V.K. Jain, for the Appellant; D.M. Shah, for the Respondent

Final Decision : Dismissed

Judgement

J.G. Chitre, J.

The petitioner is hereby assailing correctness, propriety and legality of order which has been passed by 5th Additional District Judge, Indore in the matter of Civil O.S. 89-A/89. The said suit was filed by Shri Satyapal Anand for a decree against the present petitioner, along with Resp. 2- Indore Motor Parts Dealers Association-co-plaintiff in the said suit. As application in view of provisions of Order 11. Rule 12 r/w 151, CPC seeking discovery was filed by Resp. No. 1.- Satyapal Anand on 4-2-91 and by that application the discovery was sought in view of Order 11, Rule 12. On 4-2-91 the learned trial Court rejected that application. Resp. 1 challenged that order by presenting Civil Revision No. 42/92. Said revision petition was heard and decided by this High Court by its order dt. 1-2-95 and by virtue of that order the present petitioner-Indore Development Authority was directed to make discovery on or before 3-3-95. It was also made clear that failing to comply with the said directions of making the discovery the present petitioner - I.D.A. was to face legal consequences.

Thereafter the matter was dealt with by the trial Court on 17-1-96 after giving many opportunities to present petitioner-I.D.A. from 3-3-95 to 17-1-96. The trial

Court held that the present petitioner I.D.A. did not make the discovery as directed by the High Court and sought by the plaintiff-Satyapal Anand and, therefore, the trial Court passed the order and directed that the defence of I.D.A. stood struck off in view of provisions of Order 11, Rule 21. On 11-3-96 present respondent No. 1. plaintiff Satyapal Anand submitted present application in view of provisions of Order 11 Rule 14 for production of such documents as were then known to the plaintiff and mentioned in the list annexed to said application marked by letter "A1. On 13-4-96 after hearing the parties learned trial Court directed I.D.A. the present petitioner to produce all the documents as per list - "A" filed by Satyapal Anand by 13-5-96. On 13-5-96 no documents were filed by I.D.A. and it sought time which was allowed till 5-7-96. Again on 5-7-96 no documents were filed. It appears from the record that the hearing was adjourned to 17-7-96 but even on that date also I.D.A. did not file those documents.

On 12-8-96 again those documents were not filed by IDA, however, further time was prayed. Trial Court granted further time as last opportunity till 29-8-96. On 29-8-96 no documents were produced, again time was prayed for and it was granted by the trial Court. It was repeated on 13-9-96 and trial Court granted further time till 30-9-96. On 30-9-96 again no documents were produced and further time was granted. Thereafter on 29-10-96. no documents were produced and again time was sought which was granted by the trial Court by saddling I.D.A. with cost of Rs. 100/-. On 18-11-96 again those documents were not produced by I.D.A. and even cost was not paid. On 16-12-96 those documents were not produced and again time was sought by I.D.A. which was granted by the trial Court by saddling I.D.A. with further cost of Rs. 100/- which was to be paid to the plaintiff. On 16-12-96 the documents were not produced and time was again sought and granted on payment of cost of Rupees 100/-. On 24-1-97 the documents were not produced nor the cost of Rs. 100/- + Rupees 100/- + Rs. 200/- was paid by I.D.A. to respondent No. 1, plaintiff, Satyapal Anand.

On 1-2-97 when I.D.A. failed to produce the documents directed to be filed by the trial Court in view of order of the High Court. Respondent No. 1 filed an application in view of provisions of Order 11, Rule 21 again requesting the Court to strike down the defence of I.D.A., the present petitioner. On 1-2-97 again the time was sought by J.D.A. which was granted by the Court and suit was adjourned to 6-2-97. The suit came before Court on 28-3-97 and again I.D.A. sought the adjournment which was granted. The suit was placed before Court on 2-4-97, again hearing was adjourned to 3-4-97. Arguments were heard and I.D.A. filed reply along with affidavit of Law Officer of I.D.A. Mr. Sharma. The reply was dated 6-2-97 and the affidavit of Mr. Sharma was dated 1-2-97. Mr. Sharma attempted to give the reasons for non-production of those documents. The order was reserved by the Court till 3-4-97. It was not pronounced on that date and it was adjourned to 22-4-97. On 22-4-97 the Court pronounced the order striking off the defence of I.D.A. in the said suit on two counts - (i) that the order dtd. 13-5-96 directing production of documents as per list "A" filed by plaintiff-Satyapal Anand along with application in view of Order 21, Rule 14 was

not complied with despite various adjournments sought and granted, (ii) that on the ground that no discovery was made by filing affidavits, as required. That order is being assailed by this revision petition.

Shri V. K. Jain, counsel appearing for petitioner placed reliance on following Judgments :

- 1) AIR 1954 MP 65 (Shyamlal Guruprasad v. Ganpatlal)
- 2) The State of U.P. Vs. Raj Narain and Others,
- 3) Babbar Sewing Machine Company Vs. Trilok Nath Mahajan,
- 4) Chinnappan Vs. Ramachandran, .

By making reference by those judgments he submitted that the order under challenge be set aside by allowing this revision petition.

Shri D. M. Shah, counsel appearing for Satyapal Anand and assisted by him placed reliance on following judgments :

- 1) AIR 1936Nag 130
- 2) AIR 1956 Sau 58 (D. B. Judgment)
- 3) 1966 MPLJ 26, Baboo v.Tumla
- 4) Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat,
- 5) Shri M.L. Sethi Vs. Shri R.P. Kapur,
- 6) Mechelec Engineers and Manufacturers Vs. Basic Equipment Corporation,
- 7) A.R. Antulay Vs. R.S. Nayak and Another,
- 8) State of Rajasthan Vs. Prakash Chand and Others,

In the matter of Shyamlal Guruprasad v. Ganpatlal (AIR 1954 MP 65) (supra), it has been held by Madhya Bharat High Court that -

"Action under Order 11, Rule 21 should be taken only in extreme cases and as a last resort. The test laid down is whether the default is wilful. Unless and until It is proved that the default is wilful, penalty should not be imposed even if the order of the Court is not complied with owing to negligence or inadvertence."

In that matter "the Court had ordered the defendant on 27-4-50 to allow the plaintiff to inspect the documents and 29-5-50 was fixed for Inspection of documents but on that date the defendant did not produce the documents but ultimately produced on 27-6-50 and thereupon the plaintiff filed an application to have the defence struck out." In the same matter Madhya Bharat High Court held that -

"As the documents had already been produced the default was not wilful and, therefore, said application praying for striking out the defence was rejected."

In the matter of The State of U.P. Vs. Raj Narain and Others, It has been held by the Supreme Court -

"Where no affidavit was filed an affidavit could be directed to be filed later on. The Grosvenor Hotel London group of cases (1963) 3 All ER 426 (1964) 3 All ER 354 in England shows that if an affidavit is defective an opportunity can be given to file a better affidavit."

The Supreme Court pointed out in that Judgment further that -

"It is for the Court to decide whether the affidavit is clear in nature of document. The Court can direct further affidavit in that behalf. If the Court is satisfied with the affidavits the Court will refuse disclosure. If the Court in spite of the affidavit wishes to inspect the document, the Court may do so." In the matter of Babbar Sewing Machine Company Vs. Trilok Nath Mahajan, ; The Supreme Court held that -

"An order striking out the defence under Order 11, Rule 21 should be made unless there has been obstinacy or contumacy on the part of the defendant or wilful attempt to disregard the order of the Court, to produce the documents. Even assuming that in certain circumstances the provisions of Order 11, Rule 21 must be strictly enforced, It does not follow that a suit can be lightly thrown out or a defence struck out, without adequate reasons. The test laid down is whether the default is wilful. In the case of a plaintiff. It entails in the dismissal of the suit and, therefore, an order for dismissal ought not to be made under Order 11, Rule 21. unless the Court is satisfied that the plaintiff was wilfully withholding Information by refusing to answer interrogatories or by withholding the documents which he ought to discover. In such an event, the plaintiff must take the consequence of having his claim dismissed due to his default. i.e. by suppression of information which he was bound to give. In the case of the defendant, he is visited with the penalty that his defence is liable to be struck out and to be placed in the same position as if he had not defended the suit. The power for dismissal of a suit or striking out of the defence under Order 11, Rule 21. should be exercised only where the defaulting party fails to attend the hearing or is guilty of prolonged or Inordinate and inexcusable delay which may cause substantial or serious prejudice to the opposite party." In the matter of Babbar Sewing Machine Company Vs. Trilok Nath Mahajan, (supra), the Supreme Court further held that "The defendant, in compliance with the Court's order came all the way from a distant place and was waiting in his lawyer's office from 6 p.m. to 8.30 p.m. on the date prescribed for production of account books and the material on record showed that the appointed scheduled time and place for Inspection of defendant's account books was 6.30 p.m. at defendants lawyer's office and the plaintiff and his counsel did not turn up and the plaintiff was also afforded another opportunity of inspection of defendant's books, the trial Court was not justified in holding that there was non-compliance of its order. Consequently, the order of the trial Court striking out the defence was liable to be set aside."

In the matter of Chinnappan Vs. Ramachandran, , single Bench of Madras High Court held that -

"A failure to produce documents directed to be produced by an order of Court passed under Order 11, Rule 14 CPC does not enable the Court to exercise its powers under Order 11, Rule 21, CPC. In view of this an application seeking the assistance of the Court to exercise its powers under Order 11, Rule 21, CPC is misconceived and not maintainable."

In the said matter, the "respondent by means of an endorsement through his counsel, belatedly brought to the notice of the Court that the documents directed to be produced were not available. Merely from this circumstance, it cannot be readily assumed that the respondent, with the intention of disobeying and disregarding orders of Court, did not produce the documents directed to be produced. There is, therefore, no Justification for resorting to and exercising the drastic powers of Court under Order 11, Rule 21, CPC to strike out the defence of the defendant- respondent in the suit, even on the assumption that the application filed by the appellant under Order 11, Rule 21, CPC is maintainable.

The ratio of the judgment of Nagpur High Court in the matter of Premraj BheoraJ Agarwal v. Nathumal Rupchand Marwadi, reported in AIR 1936 Nag 130, is that so far as order for production of documents is concerned, Order 11 Rule 14 states that the Court may order production of such documents as are in the possession or power of a party to the suit, and Order 11, Rule 21 provides the penalty for non-compliance with such a direction.

In the matter of Baboo v. Tumla, reported in 1966 MPLJ 26 this Court held that -

"Decision of Nagpur High Court is binding on subordinate Court of this State."

The subordinate Judges have to obey the view taken by Nagpur High Court on account of its binding effect. The decision of any other High Court can serve only as "persuasive" precedent. In any event, a decision of this High Court cannot be said to be directly or indirectly "overruled" by a decision of any other High Court. This view has been expressed by single Bench of M. P. High Court in C. R. 74/64 which was decided on 17-11-64. Thus, the view expressed by Nagpur High Court has got the effect of legal precedent of M.P. High Court because under the Chapter IV Nagpur High Court was created for Central Provinces as well as erstwhile Madhya Bharat and that is also the basis of creation of M.P. High Court, therefore, this Court has to give appropriate Importance to the ratio of the judgments of Nagpur High Court, pertaining to such previous period.

It is to be noted that creation of M.P. High Court is the fruit of Letters Patent by which Nagpur High Court was created for the area of Central Province and Madhya Bharat. It was issued by the Letters Patent dtd. 2-1-36 by the then King Emperor George, the Fifth u/s 108 of the Government of India Act, 1915 and it was established at Nagpur for Central Provinces, etc. The Letters Patent under which the Nagpur High Court was constituted and invested with jurisdiction,

continued in force after the adoption of the Constitution of India on 26th January, 1950, by virtue of Articles 225 and 372 of the Constitution but subject to the provisions of those Articles. On 1st November, 1956 M.P. State was constituted and in view of provisions of Section 59 of the Act No. XIV of 1865. High Court of Madhya Bharat State and the Courts of Judicial Commissioners for Bhopal and Vindhya Pradesh ceased to function and were abolished and High Court for Madhya Pradesh was constituted.

Shri Satyapal Anand placed reliance on judgment of the Supreme Court in the matter of Shri M.L. Sethi Vs. Shri R.P. Kapur, , wherein Supreme Court held that :

"Order for discovery cannot be said to be without jurisdiction merely because It was passed on an application for discovery not specifying the documents sought to be discovered. Party seeking discovery can come to know of specific documents only when the other side filed the affidavit of documents in reply to the order of discovery".

In the same judgment Supreme Court further observed that -

"The documents sought to be discovered need not be admissible in evidence in the enquiry or proceedings. It is sufficient if the documents would be relevant for the purpose of throwing light on the matter in controversy. Every document which will throw any light on the case is a document relating to a matter in dispute in the proceedings, though it might not be admissible in evidence. In other words, a document might be inadmissible in evidence yet it may contain information which may either directly or indirectly enable the party seeking discovery either to advance his case or damage the adversary's case or which may lead to a trial of enquiry which may have either of these two consequences. The word "document" in this context includes anything that is written or printed, no matter what the material may be upon which the writing or printing is Inserted or imprinted."

It further held that -

"In an application to sue in forma pauperis, discovery on affidavit of documents relating to the bank accounts of the applicant namely pass books, cheque books, counterfoils etc. are certainly relevant to the inquiry of pauperism as they would be throwing light on the means of the applicants to pay the Court- fees or otherwise."

In view of these legal precedents and observations of the Courts, the present revision petition will have to be assessed for the purpose of coming to a correct conclusion whether the trial Court committed the error of law or of jurisdictional function in passing the order which is under challenge. By that order, the trial Court struck out the defence of the present petitioner - I.D.A. on account of not making the discovery of the documents as prayed for by the opponent. In this context provisions of Order 11, CPC will have to be considered. Order 11 Rule 1 provides for discovery by interrogatories by providing that in any suit the plaintiff

or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories, each of such persons is required to answer. Rule 2 provides - that the particular interrogatories proposed to be delivered shall be submitted to the Court, and while deciding such application the Court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them. Rule 4 provides - Form of interrogatories - Interrogatories shall be in Form No. 2 in Appendix-C. with such variations as circumstances may require. Rule 6 -- Speaks about the objections to interrogatories by answer and power to the Court for deciding the admissibility of the objections to answer any interrogatories. Rule 7 provides - For setting aside and striking out interrogatories. Rules 8 and 9 provide - for affidavit-in-answer to be filed within a particular time and the form of affidavit-in-answer to interrogatories in Form No. 3 in Appendix-C. Rule 11 provides - the power of the Court to order any person interrogated to answer completely, sufficiently as required by party putting the interrogatories. Thereafter comes Rule 13 which speaks of application for discovery of documents.

Rule 12 of Order 11 provides that any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit. It has been provided that the discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

13A. By Rule 13. it has been provided that the affidavit of documents to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix-C, with such variations as circumstances may require. Rule 14 provides further that it shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just. Rule 15 provides for inspection of said documents. Rule 16 refers to notice to produce those documents. Rule 17 specifies for time for inspection when notice given. Rule 18 deals with order for inspection.

13B. Rule 20 provides for premature discovery and provides a power to Court to

deal with the situation appropriately if it comes to the conclusion that the discovery is premature, and after dealing with the interrogatories and discovery, come the provisions of Section 21 which provides for non-compliance with order for discovery, and provides punishment for defaulting party. It provides (!) where any party fails to comply with any order to answer interrogatories or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and if a defendant, to have his defence, If any. struck out and to be placed in the same position as if he had not defended, and the party Interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and (an order may be made on such application accordingly, opportunity of being heard.) Sub-rule (2) provides where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.

13C. The importance of the provisions of Rule 20 have been clarified by Rule 22 which provides that any party may, at the trial of suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to Interrogatories without putting in the others or the whole of such answer. It has been further provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought to be used without them, It may direct them to be put in.

13D. Thus, it is pertinent to note that the Legislature had specific intention to deal with the topics of interrogatories, discovery. Inspection together. These things have been brought to the aid of the Court or to the aid of litigants for the purpose of pinpointing the averments of adversaries. The Legislature did not want to allow the litigants to have the opportunity and leisure of burdening the record with Irrelevant averments, objections. The Legislature did not want the trials to go on dilated on account of irrelevant averments of litigants, production of irrelevant documents by the litigants and keeping back the documents from the notice of the Court and thereby polluting the stream of the administration of justice which should always be free flowing one and should be aimed totally for the purpose of finding out the truth for the purpose of adjudicating the issues in controversy between the rival parties. Therefore, it is to be noted that these provisions are not to be taken lightly. If these provisions are read together and the impact created by It is understood properly in proper spirit, one will have to come to a conclusion that the provisions are not only Important but are having a mandatory effect on the course of trials. If the Court is satisfied that a particular party is keeping back the documents which have been demanded by a party, the Court has power to punish such a party for adopting such evasive and tricky attitude for the purpose of suppressing the truth from the notice of the Court. The party cannot be permitted to have a luxury of seeking the adjournments, for avoiding the compliance with order of the Court in answering the interrogatories or discovering the documents sought by the adversary for the inspection or for the purpose of bringing it to the notice of the Court. Rule. 21 has to be given

Importance in this context because that is the powerful hammer which has been vested in the hands of Court for ordering the orderly behaviour of a party in the trial.

The party who fails to answer the interrogatories or to discover the documents for inspection, has to be punished otherwise, such party would be seeking adjournments after adjournments and would be avoiding answering the Interrogatories or making the discoveries of the documents sought. Court has been provided with the power of punishing such party by putting it "to a zero point. If it happens to be plaintiff, to make it to suffer the punishments of being forbidden to bring another suit on account of such dismissal and if It happens to be defendant, by striking out his defence and putting him to such a situation as if he had not defended the suit. That means making him to participate in the suit without pleadings and defence.

In the present matter an application for discovery was initially moved on 4-2-91. It was rejected but thereafter it was allowed by the High Court in C.R. 45/92 on 8-2-95. As the record shows the petitioner took the opportunity of seeking adjournments after adjournments and dragged the task of making the discovery of those documents till 1 -2-97, when the affidavit was filed, and the documents were produced as submitted by Shri V. K. Jain, appearing for the petitioner. Appendix "C" provides a pro forma for the affidavit to be filed for such discovery. CPC expresses that a party which has been ordered to make the discovery of the documents has to file such affidavit as soon as possible. By taking into consideration the genuine difficulties of such party the Court is vested with the discretion of granting adjournments. But those adjournments should be reasonable and limited. In the present matter the petitioner did not file the said affidavit till 1-2-97, in addition to that It did not file an affidavit which has been prescribed by Form No. 5 in Appendix-C of C.P.C. The affidavit has to be filed in prescribed pro forma. Other type of affidavits are not allowed to be filed and should not be entertained by the Courts. One can understand such an act from a layman a rustic villager who is participating in the hearing of the suit without the assistance of a lawyer, but here in the present case the concerned party is none else but a big authority, well equipped with number of employees as its staff and a panel of lawyers to advise it and assist It in arena of legal battles in the Courts. Therefore, the failure to file the prescribed affidavit will have to be viewed seriously and cannot be permitted to pass by, without consequential Impact of default committed.

Shri Anand placed reliance on M.P.Civil Courts Act and Rules- pages 67 and 68, more particularly Rules 142 and 143 and submitted that in Rule 143 - Sub. Rule 2 it has been mentioned that" presiding Judges must make themselves thoroughly conversant with the rules relating to discovery, inspection, etc, and the High Court desires it to be understood that definite and systematic attempts should be made to apply them in all suitable cases. Presiding Judges should try to persuade parties and their pleaders to make proper admissions and to make

full use of these provisions of the code and in suitable cases should themselves take the initiative in introducing and applying these rules. By an intelligent and Judicious use of the provisions of Section 30, Civil Procedure Code, It should be possible for presiding Judges to initiate a systematic practice as regards the preparation of a case for trial and presiding Judges must regard it as a part of their ordinary duty to act suo motu u/s 30, Civil Procedure Code, in suitable cases even parties or counsel fail to do so."

"He also invited the attention of the Court to note at the bottom of this rule which informs that - in forming an estimate of the merit and general efficiency of officers, their ability to make a systematic and intelligent use of these rules will be taken into consideration and the District Judge should, in his inspection, record whether the provisions referred to are being systematically and effectually made use of. "

These are rules of guidance provided to the Judges of the subordinate Courts to conduct the Court business. Shri Anand submitted that the High Court has given Importance to these instructions and, therefore, trial Court should have followed it scrupulously. The High "Court has understood the Importance of that and therefore, guidelines have been issued in that context as indicated by Rule 143.

18-19. The importance of these provisions cannot be ignored. True, as indicated by Madhya Pradesh High Court in the matter of Shyamlal Guruprasad v. Ganpatlal(AIR 1954 M P 65) (supra) action under O, 11, Rule 21 should be taken only in extreme cases and as a last resort. But in that matter the default which was committed by the concerned parties was of avoiding appointment for a single day when inspection of the documents was directed and the documents had already been produced and, therefore, the default was not wilful. In The State of U.P. Vs. Raj Narain and Others, no affidavit was filed and it was Indicated that filing of affidavit would be directed, lateron. But that was dealing with different facts and was dealing with provisions of Representation of the People Act. In Babbar Sewing Machine Company Vs. Trilok Nath Mahajan, the Supreme Court has held that "An order striking out the defence under Order 11, Rule 21 should not be made unless there has been obstinacy or contumacy on the part of the defendant or wilful attempt to disregard the order of the Court to produce the documents." In the same matter the Supreme Court also held that - "Even assuming that in certain circumstances the provisions of O.11, Rule 21 must be strictly enforced. It does not follow that a suit can be lightly thrown out or a defence struck out, without adequate reasons. The test laid down is whether the default is wilful. In the case of a plaintiff, it entails in the dismissal of the suit and, therefore, an order for dismissal ought not be made under Order 11. Rule 21, unless the Court is satisfied that the plaintiff was wilfully withholding information by refusing to answer interrogatories or by withholding the documents which he ought to discover." Though the ratio in Chinnappan Vs. Ramachandran, , a decision of Madras High Court (single Bench) indicates that "A failure to produce documents directed to be produced by an order passed under

Order 11, Rule 14, C.P.C. does not enable the Court to exercise its powers under O. 11, Rule 21, C.P.C." This Court does not agree with the view expressed by the single Bench of Madras High Court respectfully, for the reasons stated hereunder :

The tone of the language of different cases cited above makes it clear that the provisions of Order 11, Rule 21 are Important and are to be used at appropriate stage for punishing a party who is in the habit of committing default wilfully and obstinately. It is the duty of every party to obey the orders of the Court. The discovery of the documents is ground to enable the concerned party to know the Information about the documents which are in possession of his adversary. By it, he can bring the facts to the notice of the Court for the purpose of substantiating his case and demolishing the case of the adversary. The provisions of interrogatories and discovery of the documents are used for the purpose of systematising and channelising the averments of the parties so as to reduce the crowd of the averments and to find out the substantial issues in controversy substantially. It provides the narrow range of the issues in dispute for the purpose of enabling the Court to focus its attention to limited area of the issues in disputes. A party, which does not render the assistance to the Court in its pursuit of finding the truth has to be penalised. True, the decision to this effect has to be taken by the Court reasonably and as last resort.

In this context the counsel for petitioner Shri V.K. Jain has submitted that in the matter of writ petition mentioned above, some of the documents which are attempted to be discovered, were produced for perusal of the opponent and, therefore, opponent has not been prejudiced in putting his case as plaintiff before the Court. It is true that some of the documents may have been produced before Court at the time of hearing of said writ petition. For hearing writ petitions the Court has to use provisions of C.P.C. as far as possible. It is true, procedural provisions of C.P.C. do not eclipse the wider power conferred on High Court under Art. 226 of Indian Constitution, but in hearing of writ petition, the parties may not be having a right to utilize provisions of Order 11 more particularly provisions of Order 11, Rule 12, 13, 14 and 21 as a weapon to demolish case of adversaries. In hearing of writ petitions the documents could be exhibited but for a limited purpose. In trial of civil suit the rights conferred on a litigant, may be plaintiff or defendant, as indicated by Rules 12, 13, 14 and 21 are in the nature of power weapons in the armoury of such litigant. By using this armoury he can demolish the case of adversary by modulating systematically his plea. Some provisions of procedural law render advantage to litigant on account of failure of adversary. By such defaults, the adversary of the defaulting party gets a vested right. That right has to be given due importance in view of default committed by a defaulting litigant. It assumes greater importance when such default is continuously repeated.

In the speedy trial of the present suit It was important right of the opponent to have the documents discovered as indicated by his application which was

preferred before the Court. The Court granted adjournments to the petitioner enabling them to discover those documents but the petitioners continued committing default, may be under the pretext that they were not bound to discover those documents as those documents were made available in the writ petition. Those adjournments were on the dates mentioned hereunder :

1-2-1995, 10-3-1995, 4-5-1995. 22-6-1995,23-6-1995,
13-7-1995,21-7-1995,3-8-1995, 16-8-1995. 21-8-1995, 2-9-1995,
12-9-1995,27-9-1995, 17-10-1995,
18-11-1995,8-12-1995.21-12-1995,3-1-1996,6-1-1996, 17-1-1996, 11-3-1996,
15-3-1996. 18-3-1996, 22-3-1996, 13-4-1996, 13-5-1996,5-7-1996, 17-7-1996,
12-8-1996, 13-9-1996,29-9-1996,30-9-1996,29-10-1996, 18-11-1996,
16-12-1996, 24 1-1997, 1-2-1997, 6-2-1997. 25-2-1997, 28-3-1997, 2-4-1997,
3-4-1997 and lastly on 22-4-1997 when the impugned order was passed which is
under challenge in the present petition.

It is true that on some dates the Presiding Officer was on leave. It is also true that on 1-2-1997 the affidavit has been filed by the petitioner and the documents were produced as discovery. Even then the said affidavit was not in Form No. 5 as mentioned in Schedule "C" of C.P.C.. in prescribed pro forma. It appears from the record that the Court was not satisfied with the discovery of such documents. The matter was adjourned and for majority of delay, the petitioner was responsible as record indicates. In this situation what the Court can do and should do? The Court has. therefore, used the last resort in striking out the defence of the petitioner. The party which disobeys the order of the Court and lingers on with delaying the hearing of the litigation, needs to be punished. The parties are bound to take immediate steps in view of the orders of the Court for safeguarding their interest. A party who continues committing the default impliedly indicates that it is not interested in safeguarding its interest. And if that party suffers on account of action taken by the Court in view of important provisions of law. It does not have any right, even moral to make a grievance. Every party engaged in the litigation is entitled to use the procedural provisions of law as armoury for the purpose of demolishing the castles of its adversary in the litigation.

Thus, summing up all I come to the conclusion that the trial Court was fully justified in exercising the power in view of provisions of Order 11. R, 21.1 am also satisfied that in the circumstances of the case that was the last resort available to the Court for disciplining the petitioner. For such loss, the concerned officers of the petitioner are responsible. It is now for the petitioner either to thank them or to blame them.

Thus, the petition stands dismissed with costs.