

**(2000) 05 RAJ CK 0081**

**In the Rajasthan High Court**

**Case No : Civil Revision Petition No. 1815 of 1999**

Jaipur Hardware and Machinery Stores

APPELLANT

Vs

Kesarlal Chandlal and another

RESPONDENT

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**Date of Decision : 29-05-2000**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 5

**Citation :** (2000) 4 RLW 154 : (2000) 4 WLC 248 : (2001) 1 WLN 688

**Hon'ble Judges :** Arun Madan, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

Arun Madan, J.—This revision petition has been filed by the petitioner (plaintiff) against the order dated 16.10.1999 passed by the Additional Civil Judge (JD), Jaipur City (West) in Civil Suit No. 696/1993, whereby application of the respondent No. 2 (defendant) under Order 14 Rule 5 CPC for framing five additional issues was allowed.

2. In aforesaid application, request was made by defendant No. 2 to the trial court for framing additional issues as the same were required to be settled on the basis of rival pleadings. The plaintiff in reply to the aforesaid application had taken stand that original suit was instituted for perpetual injunction against the defendant No. 1. The defendant No. 2 was subsequently impleaded as party upon his application, and after written statement having been filed by the defendant No. 2 the trial court framed amended issue as to whether the plaintiff was entitled to grant of an injunction for restraining the defendants from:- (a) ejecting the plaintiff from the suit premises and (b) obstructing the plaintiff from using suit premises, without due process of law?

3. Sub-rules (1) & (2) of Rule 5 of Order 14 CPC read as under:

5. Power to amend, and strike out, issues-(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it

thinks fit, and all such amendments or additional issues as may be necessary for determining matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

4. In the instant case, five additional issues were framed by putting burden to prove the same upon the defendant No. 2, to elucidate the controversy at issue and to assist the court in dispensation of justice in determining the real controversy between the parties. It is in view of this that application of the defendant No. 2 has been allowed under Order XIV Rule 5 CPC. I do not find any merit in this revision petition because framing of additional issues would not prejudice case of the plaintiff in any manner rather since the burden to prove additional issues has been put upon the defendant No. 2, the plaintiff will have full opportunity to adduce evidence in rebuttal to disprove them. There is no illegality or material irregularity or jurisdictional error in the impugned order so as to warrant interference in exercise of revisional jurisdiction.

5. As a result of the above discussion, this civil revision petition is dismissed in limine.