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**(2006) 01 AHC CK 0031**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 5285 of 2006**

Kamal Singh and Others

APPELLANT

Vs

Smt. Faiyazan

RESPONDENT

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**Date of Decision :** 27-01-2006

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 17, Order 18 Rule 2(4), 151

**Citation :** (2006) 2 AWC 1270 : (2006) 1 RD 482

**Hon'ble Judges :** Umeshwar Pandey, J

**Bench :** Single Bench

**Advocate :** Govind Krishna, for the Appellant; Kamla Mishra, S.C., for the Respondent

**Final Decision :** Allowed

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## Judgement

Umeshwar Pandey, J.—Heard learned Counsel for the parties.

2. It has been contended that the application moved on behalf of the defendants petitioners for granting permission to examine three witnesses in the trial court was refused vide order dated 20.10.2005 and the revision filed against the said order by the petitioners before the District Judge was also dismissed vide order dated 22.11.2005. In the application for permission to examine the witnesses, it was specifically stated that the witness namely Ompal is a person, who had lent some amount to the plaintiff respondent, which she (plaintiff) paid back to Ompal on 10.10.2000 after receiving the consideration sum from the defendants for executing the impugned sale deed dated 30.9.2000. It is a suit for cancellation of sale deed dated 30.9.2000 in which several grounds were taken. It has also been pleaded that no consideration was received in respect of this transaction of sale by the plaintiff from the defendants petitioners. In order to prove the fact that there has been actual payment of consideration to the plaintiff by the defendants, the petitioners proposed to examine the aforesaid witness Ompal and for that purpose the prayer was made in the application. It is further stated in the said application that since the knowledge of this fact of

repayment of the loan amount made by the plaintiff to Ompal, could be obtained by the petitioners only on 5.10.2005, he moved an application for permission to examine the witness. The trial court has rejected his application on the ground that the evidence of the parties was closed long back and that there was absolutely no justification for permitting the examination of the witnesses. The revisional court has held that since after 1999 amendment of the CPC in Order XVIII, Rule 2(4) the permission could not be granted.

3. Learned Counsel relying upon a case law of Salem Advocate Bar Association, Tamil Nadu v. Union of India 2005 (3) AWC 2996 (SC) has argued that even though by virtue of 1999 amendment the provisions of Sub-rule (4) of Order XVIII, Rule 2, C.P.C. has been omitted yet the discretionary power of the Court to permit examination of the witness, if found relevant has not been taken away. Para 33 of the judgment is important in this regard, which is reproduced as below:

Order XVIII, Rule 2(4) which was inserted by Act 103 of 1976 has been omitted by Act 46 of 1999. Under the said Rule, the Court could direct or permit any party, to examine any party or any witness at any stage. The effect of deletion is the restoration of the status quo ante. This means that law that was prevalent prior to 1976 amendment, would govern. The principles, as noticed hereinbefore in regard to deletion of Order XVIII, Rule 17(a), would apply to the deletion of this provision as well. Even prior to insertion of Order XVIII, Rule 2(4), by the Court in its discretion, the provision was inserted in 1976 by way of caution. The omission of Order XVIII, Rule 2(4) by 1999 amendment does not take away Court's inherent power to call for any witness at any stage either suo motu or on the prayer of a party invoking the inherent powers of the Court.

4. This Ompal is a witness, who is said to have received some money from the respondent plaintiff soon after he had executed the impugned sale deed in favour of the petitioners. The evidence of this witness, if found positive and believable, will present before the Court a circumstance, which may facilitate just and proper adjudication of the matter on this issue, whether any consideration in the impugned transaction had actually passed from the vendee to the vendor. Naturally, this fact is a very relevant fact in the matter and if the evidence of Ompal throws due light on such issue, it will definitely facilitate just and proper adjudication of the dispute between the parties, which has to be decided by the Court. Obviously, the evidence of Ompal was relevant and permission of his examination as a witness could not have been refused simply because there was some delay in the proposal made by the defendants petitioners for such tendering of the evidence. It should have also not been refused simply because Sub-rule (4) of Rule 2 of Order XVIII, C.P.C. had been deleted by 1999 amendment from the Code. The principle of law laid down by the Apex Court and otherwise also under the inherent power of the Court, as enshrined u/s 151, C.P.C, the Court has every jurisdiction to pass any such order, which in its opinion appears to be just and proper for proper dispensation of justice to the

parties. Accordingly, the prayer of the petitioners to the extent it was made for examining the witness Ompal was quite justifiable. The other witness Jitendra, who is the scribe of sale deed and is also relevant witness, must be examined and permission for his examination should be granted along with Ompal.

5. In view of the aforesaid, the petition is allowed and the orders of the Court below dated 20.10.2005 and 22.11.2005 are hereby quashed. It is directed that the witnesses Ompal and Jitendra, as mentioned in the application of the defendants petitioners, shall be permitted to be examined in the trial court latest between 1.2.2006 to 15.2.2006 and not beyond it. Meanwhile, a certified copy of this order shall be obtained by the petitioners and submitted to the trial court for proceeding with the matter as directed above. In case, till 15.2.2006 the witnesses are not examined, no permission would be given thereafter for such examination.

6. The certified copy of this order be given on due payment to the parties by 30.1.2006.