
(1977) 01 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Revision Petition No. 148 of 1975

Liladhar and Another

APPELLANT

Vs

Shah Nandlal Mitalal Marwadi

RESPONDENT

Date of Decision : 10-01-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 1

Citation : (1977) WLN 114

Hon'ble Judges : S.N. Modi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Modi, J.—This revision petition by the defendants is directed against an order of the Additional District judge, Udaipur, dated January 17, 1975. The facts giving rise to this revision petition may be briefly be-stated as follows.

2. The plaintiff-non-petitioner filed a suit against the defendants for the recovery of Rs. 22,566/07 on the basis of pro-note dated October 30, 1969. The defendants resisted the suit on various grounds. On the pleadings of the parties, the court framed as many as 9 issues on July 25, 1974 and adjourned the case to September 13, 1974 for examination of the plaintiffs' witnesses. The parties were also directed to file list of witnesses within 15 days. The plaintiff filed list of witnesses within the time but the defendants failed to do so. They filed the list of witnesses on November 7, 1974, i.e. before the plaintiff closed his evidence. The learned Additional District Judge refused to examine the witnesses mentioned in the list of witnesses filed by the defendants on the ground that the list of witnesses was filed beyond the prescribed time. It was prayed to the learned Additional District judge that the list of witnesses filed on November 7, 1974 may be treated as a list of witnesses filed for the sake of rebutting the plaintiff's evidence as the list of witnesses has been filed before closing of the evidence by the plaintiff. This oral prayer made by the learned Counsel for the defendants was also rejected. On the other hand, the learned Additional District Judge

insisted upon the counsel for the defendants to move a regular application for treating the list of witnesses dated November 7, 1974, as list of witnesses to be examined in rebuttal. But no such written application was filed by the defendants. The learned Additional District Judge, in the circumstances, closed the defendant's evidence. It is against this order that the present revision petition has been filed on behalf of the defendants.

3. I have heard the learned Counsel for the parties and gone through the record of the case.

4. Rule 1 of Order 16 CPC, as amended by Rajasthan, runs as under:

1. (i) On such date as the Court may appoint and not later than thirty days after the settlement of issues, each party shall present in Court a list of witnesses whom it proposes to produce:

Provided that a party giving evidence in rebuttal may file a list of witnesses not later than fifteen days from the date of closure of the evidence of his opponent.

(ii) No party shall produce or obtain process to enforce the attendance of witnesses other than those contained in the list referred to in Sub-rule (i), except with the permission of the Court and the Court granting or refusing such permission shall record reasons for so doing.

(iii) On the application to Court or to such officer as it appoints in this behalf, the parties may obtain summonses for persons whose attendance evidence is required in Court.

(iv) Where in accordance with the Proviso to Rule 8 of Order 16 a party has obtained summonses for any witnesses for service by himself or through his agent summonses for any such witnesses shall not unless specially ordered by the Court for reasons to be recorded in writing, be re-issued for service in the manner provided for the service of summons to a defendant.

The proviso to Clause (i) of Sub-rule (1) empowers the party giving evidence in rebuttal to file a list of witnesses within 15 days from the date of closure of the evidence of his opponent. The learned Additional District Judge, in the circumstances, could have treated the list of witnesses dated November 7, 1974 to be a list under proviso to Sub-clause (i) of Rule 1 of Order 16 C.P.C. That apart, it has been laid down in *Baxiram v. Ashwani Kumar* RLW 1965 111 that subordinate courts should not forget that rules of procedure are intended to promote justice and not to hamper it. The High Court framed Rule 1, Order 16 differently to prevent undue delay in disposal of cases but the learned Additional District Judge, in the present case, as a matter of fact, prolonged the case by shutting the defence evidence. There was no point in insisting upon a written report, when the learned Counsel for the defendants made an oral request that the list of witnesses dated November 7, 1974 may be treated as a list of witnesses to be produced in rebuttal.

4. I accordingly allow this revision petition set aside the impugned order passed by the learned Additional District Judge and permit the defendants to examine the witnesses mentioned in the list dated 7th November, 1974.
5. The parties are directed to appear before the learned Additional District Judge on February 21, 1977. The defendants are further directed to get their witnesses summoned through the court on or before February 1, 1977.
6. The record of the case may be sent back immediately.
7. Having regard to the circumstances of the case, I leave the parties to bear their own costs in this Court.