

(1973) 08 OHC CK 0021

In the Orissa High Court

Case No : Civil Revision No. 308 of 1972

State of Orissa

APPELLANT

Vs

Balaram Panda and Others

RESPONDENT

Date of Decision : 09-08-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1974 Ori 114 : (1973) 39 CLT 1091

Hon'ble Judges : G.K. Misra, C.J

Bench : Single Bench

Advocate : R.C. Patnalk, Add. Government Advocate, for the Appellant;

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—Shri K.N. Das, under Secretary, Industries Department (defendant No. 3) was cross-examined in Dart as D. W. 2 on 7-7-1972. The case had been adjourned to 17-8-1972. That day he reached Court sometime after 12.30 p. m. The learned Munsif passed an order on that day to the following effect:

"It is 12.30 p.m. The witness K.N. Das is also found absent on calls. As the witness is not present for cross-examination by the plaintiff, his evidence is expunged from record. There is no hazira of any other witness. Evidence closed. To 22-8-3972 for argument in the suit"

Later the Government pleader filed an application to give the State an opportunity of examining D. W. 2 so that he would be cross-examined. This was just about 12.30 p. m. after the order of the day had already been passed. The learned Munsif rejected that application saving that it did not disclose sufficient ground as to why the witness could not appear till 12.30 p.m.

2. While it is true that Courts should be very strict in seeing that witnesses attend Courts punctually they must be equally careful to further examine whether the temporary absence and coming late to the Court was based on any

justifiable grounds. D. W. 2 stated that due to his attending to certain urgent official matters he was somewhat late. There was no justification for the Court to be so rigorous as not to allow further Cross-examination. In my view the Court exercised his jurisdiction with material irregularity and his order is liable to be set aside.

3. I, accordingly, set aside the impugned order so far as it relates to examination of D. W. 2. The learned Munsif should allow D. W. 2 to be cross-examined by the plaintiff and give an opportunity to the State to examine other witnesses, if any.

4. In the result, the Civil Revision is allowed, but in the circumstances without costs. aS the case is part-heard and has become already old, attempt should be made to dispose of the case quickly.