Dal Chand Vs. Ramakant

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Court : Rajasthan

Decided On : Feb-16-1971

Reported in : 1971WLN45

Judge : L.N. Chhangani, J.

Appeal No. : S.B. Civil Revision No. 202 of 1969

Appellant : Dal Chand

Respondent : Ramakant

Disposition : Petition dismissed

Judgement :

L.N. Chhangani, J.

1. This revision raises an interesting question as to the interpretation of Order 16 Rule 1, Civil Procedure Code, as amended by the Rajasthan High Court.

2. The revision came up for hearing on 10th February, 1971. The learned Counsel for the parties pointed out that a number of revisions against orders passed by subordinate courts on varying interpretations of Order 16 Rule 1 C.P.C. have been pending in this Court and that the subordinate courts have passed contradictory orders almost in similar circumstances and suggested that the hearing of the revision application may be adjourned and all Advocates interested in assisting the

Court for the proper interpretation of Order 16, Rule 1 C.P.C. should be given an opportunity to do so. The case was, therefore, adjourned for hearing today, and a number of similar revisions were also listed for hearing.

3. I have heard Mr. A.L. Mehta for the petitioner and Mr. D.S. Sishodia for the respondent. The other counsel appearing in other cases and the Advocates who were interested in assisting the Court for the proper interpretations of Order 16 Rule 1 were also allowed to place their views before the Court.

4. The learned Counsel very much emphasised the need of laying down principles guaranteeing uniform administration of law by the subordinate courts. While there can be a settled view as to the proper interpretation of Order 16 Rule 1 there is bound to be great diversity of facts and circumstances in applying the principle to the actual cases coming before the subordinate courts. Naturally I must recognise the need of the exercise of a considerable measure of discretion on the part of subordinate courts and the futality of laying down rigid and, exhaustive set of rules of formulae for applying the correct principle of Order 16 Rule 1 CPC. However, it becomes necessary to attempt to asertain the correct principle of Order 16 Rule 1 as also to ascertain the broad guide lines that should be kept in mind while deciding individual cases. Before doing so, it will be proper to set out the facts of the present case.

5. In this case the non-applicant Ramakant filed a suit against the applicant Dalchand for damages for libel. Issues in the case were framed on 8-12-67 and parties were allowed 30 days time to produce list of witnesses and the date for recording evidence was fixed on 23 1-68. The plaintiff did not submit any list nor did he keep his witnesses ready on 23-1-68. On 23-1-68 the plaintiff sought an adjournment on the ground if illness of the Advocate. An adjournment was granted and the case was fixed on 18-3-68 for plaintiffs' evidence. On 18-3-68 the plaintiffs' witnesses were not present in Court but the Presiding Officer was also on leave and the case was adjourned to 9-7-68. On 9,-7-68 also the plaintiffs' witnesses were not present. The plaintiff sought an adjournment. The defendant raised on objection and the case was adjourned to 10-9-68 On 26-8 68 the plaintiff submitted an application for permission to file list of witnesses as required by

Order 16 Rule 1 CP.C. This application come up before the court on 28-8 68. A notice was directed to be issued to the defendant. The application was adjourned for hearing on 10-9 68. On 10-9-68 two witnesses namely, Yagyanarain and Mohanlal, were present. The Presiding Officer was on leave and the case was adjourned to 15-11-68. On 15-11-68 three witnesses, namely. Yagyanarain, Mohanlal and Kanhaiyalal were present but the Presiding Officer was on leave. Oh the next date of hearing, that is 25-2-69, the plaintiffs' three witnesses were present. The application dated 26-8-68 was heard and the court allowed the plaintiffs-application and ordered that the witnesses named in the list dated 26-8-68 would be permitted to be examined. Aggrieved by this order, the defendant has filed the present revision application.

6. For a proper interpretation of the Rule, it will be useful to review simultaneously the legislative history of the rule and the decisions of this Court interprting the rule.

7. The provisions of Order 6 Rule 1 C.P.C. as it stood before its amendment by the Rajasthan High Court is as follows:

Order 16 Rule 1 : At any time after the suit is instituted, the parties may obtain, an application to the Court or to such officer as it appoints in this behalf, summones to persons whose attendance is required either to give evidence or to produce documents.

Order 16 Rule 1A : Where any party to the suit has, at any time on or before the day fixed for the hearing of evidence, filed in the Court a list of persons either for giving evidence or for producing documents, the party may, without applying for summons under Rule 1, bring any such person, whose name appears in the list, to give evidence or to produce documents.

On the basis of law as it stood before the amendment, it was noticed as pointed out by a Bench of this Court in Mst. Tulsi Bai v. Chunnilal 1964 RLW 253, 'that case's were not infrequently prolonged by repeated applications for summoning the witnesses before the disposal of the suit, and, in any case, before the party closed its own evidence, and there was also abundant opportunity for production of spurious evidence to suit the exigencies of the occasion.' The court with a view

to ensure a speedy, efficient and pure administration of justice, and to eliminate opportunities for production of cooked up witnesses, introduced the following amendment in Rule 16(1) by Notification No. 10 S.R.O. dated 29th June, 1957 publised in Rajasthan Rajpatra Part 4-'Ga' dated 25th July, 1957, which reads as follows:

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

(2) No party shall be permitted to produce witnesses other than those contained in the said list except with the permission of the Court and after showing good cause for the omission of the said witnesses from the list; the Court granting such permission shall record reasons for so doing.

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

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

It may be mentioned that the rule as amended did not make provision for evidence to be produced in rebuttal. The Court, therefore, introduced further amendments by Notification No. 1/S.R.O. dated 20th January, 1961 which are published in the Rajasthan Gazette Part 3'Kh' dated 23rd March, 1961. By this amendment, the following proviso was added to Rule 1(1):

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

Sub-rule 1(11) was substituted by the following-

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 (1), except with the permission of the Court and after showing good cause for the same, and the Court granting or refusing such permission shall record reasons for so doing.

The material change in the Sub-rule 1(11) as it stood prior to the amendment may be indicated here. Instead of 'showing good cause for the omission of the said witnesses from the list' the rule used a phraseology 'showing good cause for the same'.

8. The amended rule came up interpretation for the first time before a learned single Judge of this Court in Prabhu Dayal v. Girraj Kishore 1963 RLW 463. In that case, the plaintiff filed a suit on 13-7-57. issues were framed on, 15-1-1958 and the case was adjourned to 17-3-58 for the plaintiff's evidence. On 20-1-58 the plaintiff appealed that the summonses be issued to the six witnesses referred to in the application and he also deposited Rs. 25/- for the expenses of the witnesses. On 17-3-58 the defendant-respondent submitted an application praying that as the plaintiff had not filed a list of witnesses as required by Oder 16 Rule (1) of the Civil Procedure Code the evidence of the plaintiff be ordered to be closed. On this, the plaintiff filed three applications:

1. that permission may be given to him for examining the eight Witnesses;

2. that the application filed on 20-1-58 may be treated as a list under Order 16 Rule (1) C.P.C. and

3. that at-least Prabhu Dayal plaintiff should be examined.

The trial court dismissed all these applications and closed the plaintiff's evidence. When the matter came before this Court in second appeal, the Court while interpreting Order 16 Rule (1) as amended stated as follows:

In the circumstances of the case the trial court instead of being too technical should have permitted the plaintiff to produce witness who had been summoned and who, I may point out, were present in the court on 17-3-58 and who had been sent back without being examined after paying expenses to them. There was

absolutely no bar for the trial court not to have examined those witnesses as Order 16 Rule 1(1) clearly gave the discretion to the trial court to have examined these witnesses Order 16 Rule 1(i) may be applied even to a case in which there is no list submitted under Rule 1(i). Order 16 Rule 1(ii) no doubt makes reference to the list submitted under Rule 1(i) but the emphasis is on the point that the witnesses not named in the list cannot be produced without the permission of the Court and without showing good cause for their not naming in the list. Even when there is no list, court power to take evidence of any witness remains unfettered.... This may be done under Order 16 Rule 1(ii). The case may be taken as one in which the list has been filed containing no name of any witness.

9. In Mst. Tulsi Bai v. Chunilal 1964 RLW 253, a Bench of this Court had an occasion to interpret the rule. The Bench emphasised (1) the well settled principle of interpretation 'that where the language of the Act is clear and explict, the court must give effect to it regardless of the consequences thereof, and it is only where the words are susceptible to an ambiguity and two interrelations are possible, and the one leads to justice and the other avoids it, that the court would be justified in choosing the interpretation which avoids the anomaly or injustice'. The court also held, (2) 'that the language of Order 16, Rule 1 as amended is neither vague nor ambiguous in any way and that the provision contained in Order 16, Rule 1 as amended by this Court is an express and explict one in so far as it commands the parties to a suit to file a list of the witnesses intended to be produced by or in support of their respective cases within 30 days of the settlment of issuses therein and further that this provision is mandatory and the rule itself provides the exceptions where the strict requirements of that rule can be dispensed with, that is, in cases where the party intending to produce any further witnesses shows good reasons to the court why the names of those witnesses were not mentioned in the list filed under Order 16, Rule 1 and obtains the permission of the court for their production and the court records the reason for granting or refusing the permission so asked for.' The Bench, however, expressed its express dissent with the view taken in Prabhu Dayal's case 1963 RLW 463 and observed, 'we find ourselves unable, with?11 respect, to agree with the learned single Judge as to the interpretation he put on Order 16, Rule l as amended by this Court, in so far as he held that the K filing of the list was merely a subsidiary matter of no importance

as the emphasis of the rule in his opinion lay on the requirement that the witnesses not named in the list cannot he produced without showing good cause for their not naming in the list'. With very great deference, we should like to point out that a party can produce witnesses 'not named in the list' provided that he satisfies certain conditions which necessarily contemplate that 'a list' must have been filed in the first instance, and where no list has in fact been filed, there can be no question of examining any witnesses who may be other than those named in the list. We further find it difficult to accept the proposition laid down in this decision that 'the case maybe taken as one in which the list has been filed containing no name of any witness.' The Bench of-course, referred to the amendment of 1961 referring to the provision of Sub-rule (1) permitting a party wishing to leaid evidence in rebuttal to produce supplementary list within 15 days and observed.

We are, however, clearly of opinion that having regard to the peremtory language of the provisions, it will not be open to a party to produce witnesses inspite of the fact that he has failed to produce the list of witnesses as contemplated by or within the meaning of Order 16, Rule 1.

These observations have often been relied upon for a stand that even the acceptance of a supplementary list depends upon the initial filing of a list. Before the Bench the observations of the Supreme Court in Sangram Singh v. Election Tribunal, Kotah : [1955]2SCR1 which were relied upon in Prabhu Dayal's case 1963 RLW 463 reading as follows were cited:

Now a code procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation, should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to furstrate it.

10. The Bench, however, extracted the further observations of the Supreme Court reading as follows:

Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their back, that proceedings that effected their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of-course, there must be exceptions and where they are clearly defined they must be given to. But taken by and large, and subject to that proviso our laws of procedure should be construed, where ever that is reasonably possible in the light of that principle.

and reached the following conclusion,

The true effect of this judgment, in our respectful submission, is only this that, generally speaking, undue importance should not be given to rules of procedure and any breach thereof not be visited with penalties; but where there are exceptions to this rule and where such exceptions are clearly defined, there is no course left open to the courts other than to give effect to them, It clearly seems to us that the present is a case which falls within the exceptions to the rule laid down by the Supreme Court in its judgment.

11. According to Bench decision, where the parties omit to file the list the courts have the absolutely no discretion in allowing parties to produce witnesses or to get them summoned. Such a strict view expressed by the Bench was not shared in the subsequent decisions of this Court in Baxiram v. Ashwani Kumar 1965 R.L.W. 111. In that case, the defendant did not submit any list as required by the main provision of Order 16, Rule 1. The Plaintiff closed his evidence on 5th May, 1964 and 30th May, 1964 was fixed for recording evidence of the witnesses defendant. The defendant filed his list of witness on 9-5-64, Plaintiff raised an objection that the evidence of defendant's witnesses should not be recorded as the defendant had not filed a list naming them, within one month of the framing of the issues. The trial court relying upon the Bench decision in Tulsibai's case 1964 RLW 253 did not allow the defendant to examine the witnesses. A revision against this order was allowed by a learned single Judge of this Court. In doing so, the Judge observed as follows:

The observations in Tulsibai's 1964 RLW 253 which have been extracted above, were wholly obiter. In the case before their Lordships the Rule 1 of Order 16 C.P.C. which was applicable was the one as it stood before its amendment to its present form.

12. An argument was advanced before the learned single Judge that from the use of the word 'supplementary' it should be inferred that it can be availed of only by a party which has filed a list containing the name of at least one witness under the main Sub-rule (1). Repelling this argument, the learned Judge observed.

I am unable to accept this contention. When the rule gives a second opportunity to a party to file a list of witness which it wishes to examine in rebuttal there is no reason why a party should be deprived of the advantage of it merely because it did not think it necessary to name a single rebuttal witness before the examination of the witnesses of the opposite party on the issue. Not filing a list is in mathematical terms the same thing as filing a list containing no name of any witness and it is considered necessary to be hyper technical even in a procedural matter, a party can always be deemed to have filed such a list. The reason for use of word 'supplementary' appears to be that while framing the proviso the High Court was thinking of those cases in which the buren of proof of some issues lies on one party arid the burden of other issues lies on the other. In such a case both parties are required to file their lists of witnesses when they wish to examine initially to discharge the burden which lies on them under the main Sub-rule (1) and to file lists under the proviso and these further lists are referred to as supplementary lists.

13. The Court also treated Sub-rule (1) as also giving power to the court to allow a party to produce witness despite the fact that it has failed to file a list under the main Sub-section (1) or the proviso to it as the case may be. Emphasising the need of recording reasons for permitting as well as refusing permission, the learned Judge observed, 'That indicates the anxiety of the High Court to ensure that the subordinate courts should neither allow a party to prolong litigation unduly, nor should they shut out material evidence necessary for a just decision of the case.'

14. In Pandit Bhonrey Lal v. Pt. Kunj Behari Lal 1969 RLW 1, the learned single Judge held that the parties can avail of Section 5 of the Limitation Act in securing the summoning and production of witness in case where the list could not be filed within 30 days. The learned Judge treated Order 16, Rule 1, as providing for the making of application as also prescribing the period of limitation in such applications.

15. Evidently, one cannot but notice some conflict of opinion in the decisions of this Court reviewed above which cannot but lead to some uncertainty. In this state of affairs, the Court introduced amendments in Order 16, Rule 1 given below. By this amendment, the word 'supplementary' occurring between the article 'a' and the word 'list' and the words 'with the permission of the Court occuring between the words 'witnesses' and 'not' were omitted and in Sub-rule (ii) the words and coma' and after showing good cause for the same' occurring between the words 'Court' and 'and' were also omitted. Sub-rule 1-A reading as follows was also added:

1-A. Subject to the provisions of Sub-rule (ii) of Rule 1, any party to the suit may, without applying for summons under Rule 1, bring any witness to give evidence or to produce documents.

The rule, as amended, now stands, may be quoted as follows-

SUMMONS TO ATTEND TO GIVE EVIDENCE OR

PRODUCE DOCUMENTS

At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons to give evidence or to produce documents.

Provided that a party giving evidence in rebuttal may file a list of witnesses not later than 15 days from the date of closure of the evidence of his opponent.

No party shall produce or obtain process to enforce attendance of witnesses other than these contained in the list referred to in Sub-rule (i) I except with the permission of the court and the court granting or refusing such permission shall

record reasons for so doing.

Subject to provisions of Sub-rule (ii) of Rule 1, any part may without applying for summons under Rule 1 bring any witness to give evidence or to produce documents.

16. The counsel for the respondent as also the majority of the Advocates who appeared in the other revision petitions or who intervened, vehemently contended that the Bench decision in Tulsi Bai's case 1964 RLW 253 adopted a very strict and harsh interpretation of the rule and that in doing so, the Bench did not give adequate weightage to the observations of the Supreme Court relating to the nature of the procedural law. The learned Counsel made a specific grievance in respect of the observations which indicates that a party leading evidence in rebuttal cannot even file a supplementary list if the party failed to submit the initial list as provided by the main rule.

17. I have given due consideration to the various arguments advanced at Bar. I think, it will be proper to consider the board features of the rule and to as certain the precise implications.

18. Sub-rule (i) gives a discretion to the courts to fix the periods during which the parties should file their lists subject to the maximum of 30 days. Fixation of such periods by the courts will depend upon the nature of the pleadings, the nature of the issues and the peculiar situations of the parties and the courts cannot but have ample discretion in this behalf. The courts having discretion in the matter of fixing the periods, they must have also the discretion to subsequently vary or amend the periods, subject of course to the maximum of 30 days. It follows that the initial fixation of a date by the courts, if it is within the limit of 30 days, cannot be irrevocable & the courts cannot but have discretion to change the dates on good cause being shown. It must further follow that the dates can be changed prospectively and even retrospectively. The only part of the rule which can be considered mandatory is that the courts cannot fix a date beyond 30 days. The Sub-rule (i), however, does not itself provide for any penal consequences ensuing from non-filing of the list. The only penal consequences which can be implicitly inferred from the rule is that a list cannot be filed after the expiry of 30 days &

parties cannot claim absolute rights to produce and get summoned witnesses. It must fee pointed out at this stage that in the trial of a suit there are bound to arise various contingencies pleadings may be amended involving addition and subtraction of issues; even without amendment, there may be addition and deletion of issues, the subsequent events might bring in additional controversies. It must also be added that ordinarily it may not be possible for the party leading evidence in rebuttal to have an idea of the nature of the evidence to be produced in rebuttal. That will depend upon the nature of the evidence led by the party beginning the evidence. In these circumstances an omission on the part of the party leading evidence in rebuttal does not deserve to be given much emphasis. A complete deprivation of the discretion of the courts in the matter of leading evidence in consequence of omission to file list could not have been intended by the court. It is true, as pointed out by toe Division Bench, that the court should give due weight to the need of securing speedy and pure justice but there is still greater imperative need of doing substantial justice to the parties by enabling them to obtain decision on merit, and the courts must have discretion so that they may strike a proper balance between the needs of prompt and expeditious disposal and the need of the determination of controversy on merits. While courts are certainly expected to disapprove, discourage and zealously prevent deliberate attempts at unnecessary prolongation of the cases as also carelessness or indifference to the diligent prosecution of cases, they must do within reasonable and permissible limits; they should not avoid on merits in a light hearted manner by adopting rigorous and unduly strict tests of expecting unusual and exemplary behavior of ideally careful litigants; the test to be adopted should be one of reasonable expectation by a reasonably diligent litigant. It is evident that such a considerations led to the promulgation of Sub-rule (ii) vesting discretion in the courts to allow parties to produce witnesses or to get them summoned even though their names could not be given in the initial lists. The Sub-rule (ii) as initially framed contained the words 'after showing good cause for the omission of the said witnesses from the list'. The rule also did not make adequate provision in connection with evidence to be led in rebuttal. The Court, however noticed the omissions and realised the possibilities of unduly strict interpretations and, therefore, made necessary amendments in the year 1961. A prviso to Sub-rule (1) was added to

allow a party leading evidence in rebuttal to file a supplementary list with the permission of the court. Sub-rule (ii) was also amended with changes already indicated. The two learned Judges sitting singly, interpreted Sub-rule (ii) liberally and did not find any limitations in the rule. The Bench, however, in Mst. Tulsi Bai's case 1964 RLW 253 imported some limitations in the rule and interpreted Sub-rule (ii) to lay a mandate that the discretion can be exercised only in the manner indicated in the rule. The Bench specifically held that the courts can have discretion to examine witnesses only when initial lists had been filed and when the parties are in a position to satisfy the courts for the non-inclusion of the names in the lists.

19. It appear to me that the Bench on considerations of need of prompt disposal of cases felt persuaded to enforce the language of the rule as it was in October, 1959. The Bench had no occasion to consider the implications of the amendment of the sub-rule in the year 1961. It also appears that the attention of the Bench was not invited to the various contingencies arising in the progress of a suit. Having regard to all the circumstances, I am of opinion that the decision of the Bench and its observations should be treated valid only with reference to the language of the rule in October 1959 and should not be extended further. Emphasing the amendment of the Sub-rule (ii) and relating the expression 'showing good cause for the same' with the production or obtaining of processes for witnesses other than those contained in the list, I feel strongly inclined to take the view that the courts have been given discretion to permit parties to produce witnesses or to get them summoned even in cases where initial lists were not filed.

20. The learned Counsel no doubt vehemently submitted that even on the rule as it stood, the Bench decision requires re-consideration. Having regard to the subsequent amendments in Order 16 Rule 1 and having regard to the manner in which these cases can be easily disposed of without reconsideration of the Bench decision, I did not consider it necessary to accept a suggestion for a reference to a larger Bench.

21. There is no doubt that the subsequent amendments made in the year 1970 vide S.O. 25 Dt. 6-10-70 published on 19 11-70 made the position abundantly

clear. In the proviso the word 'supplementary' has been deleted and the expression 'with the permission of the court' has also been deleted? Having regard to these changes, the observation of the Bench in connection with the list of witnesses to be examined in rebuttal cannot have any binding force or relevance in interpreting the amended rule. Similarly, the amendments introduced in Sub-rule (ii) also vest greater discretion in the subordinate courts. In this context, the observations of the Supreme Court in Sangram Singh's case AIR 1955 SC 425 as to the need of interpreting procedural law with flexibility should govern the interpretation of the rule and it will be hardly proper to treat this rule as a well defined exception within the meaning of the observations of the Supreme Court.

22. The next question which arises for determination is : whether a . revision against an order passed either on a misinterpretation of the rule or on a misapplication of the rule is competent or not? There are indeed a large number of decision of the Supreme Court, the Privy Council and various High Courts interpreting Section 115, Civil Procedure Code, and indicating the precise limits of the jurisdiction conferred upon the High Courts by this section. I do not consider it worthwhile to under take a review of all these cases and consider it sufficient to sum up some of the fundamental principles laid down in those cases:

1. Section 115 C P.C. applies only to cases in which no appeal lies and it must, therefore, be borne in mind that where the legislature has provided no right of appeal, the manifest intention is that the order of the court, right or wrong, shall be final.

2. The section applies to jurisdiction alone; the irregular exercise or non-exercise of it or the illegal assumption of it, The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved, nor is it intended to authorise the High Court to interfere and correct gross and palpable errors of subordinate courts as to prevent grave injustice in non-appealable cases as it is indeed difficult to formulate any standard by which the decree of error of subordinate courts could be measured. It need be emphasise that if the trial court had jurisdiction to decide a question before it and did decide it whether it decided rightly or wrongly, the court had jurisdiction to decide it and even if decided

question wrongly; it did not exercise its jurisdiction illegally or with material irregularity.

3. The words 'illegality and material irregularity' do not cover either errors of facts or law. They do not refer to the decision arrived at but to the manner in which it is reached. The errors contemplated refer to material defects of procedure and not to errors of either of law or facts after the formalities which the law prescribes, have been complied with. They cover cases where a court acts in breach of any provision of Jaw or commit any error of procedure which is material, and which may affect the ultimate decision.

4. That although an error in a decision of a subordinate court does not by itself involve that the subordinate court has acted illegally or with material irregularity so as to justify interference in revision under Sub-section (c) nevertheless if the erroneous decision results in the subordinate court exercising jurisdiction not vested in it by law or failing to exercise jurisdiction so vested, a case for revision arises under Sub-section (a) or Sub-section (b) and Sub-section (c) can be ignored.

5. That the powers under the section are intended to be exercised with a view to sub-serve and not to defeat the ends of justice.

6. The powers under Section 115 C P C. are discretionary and there tie order passed is just and not without jurisdiction the High Court may refuse to interfere.

23 Proceeding to consider the case in the light of the interpretation of rule 16(1) as indicated above and the principles governing the exercise of the revisional jurisdiction I may observe at once that the cases tan be class fled in some categories.

24. In the first category of cases are included these cases where the subordinate to court have taken the view that they can exercise discretion to allow parties to produce witnesses or to get them summoned inspite of omission to file the lists and have exercised discretion in favour of permitting the parties to produce or get summoned the witnesses. These order of the subordinate courts get support from

the observations of the learned single Judges in Prabhu Dayal v. Girraj Kishore 1963 RLW 463 and in Baxiram v. Ashwani Kumar 1965 RLW 111 case and they are further sustainable and justified on the further liberalizing trend of the subsequent amendment and I am unable to hold that the courts exercising discretion have acted illegally or with material irregularity in the exercise of their Jurisdiction and they cannot fall under Section 115(c). In these cases clauses (a) and (b) of Section 115 cannot be obviously attracted.

25. The second category of cases are directed against the orders where the lower courts having held that they have no jurisdiction to permit parties to produce and get summoned witnesses in the absence of initial list having been filed, have rejected application of the parties praying for permission to produce or get summoned witnesses. These orders appear to be bases on the observations of the Bench in Mst. Tulsi Bai's case 1964 RLW 253. A question arises whether in following the Bench decision of this Court they can be sad to have acted with illegality or material irregularity within the meaning of Section 115(c). The question is a little difficult and intricate one and is capable of being answered in the affirmative only after declaration by a competent Bench that the view taken by the Bench cannot be considered a good law. Sitting singly. I have ventured to indicate my difference with the Bench decision but my preference for the liberal interpretation of the rule though deriving support on a view that the Bench did not consider the implication of the amendment of the rule. I am, therefore not in a position to positively hold that the courts have acted with illegality or material irregularity. The problem, however, may be viewed from another angle. The amendments made in the year 1970 in Order 16, Rule 10 P.C. are procedure and can be invoked in pending cases. Most of the cases are still at the stages where when the orders under challenge were passed. At any rate, there has been no substantial advancement in these cases and the recording of the evidence of the parties has not yet been commenced. In my opinion, the petitioners are entitled to move the trial court to allow them to produce or get summoned material witnesses by invoking these amendments. At the same time, I am doubtful whether in the exercise of revisional jurisdiction I can invoke these liberal provisions. Having regard to all three circumstances, I am disposed to hold and the learned Counsel also agree that the proper and the reasonable course is that these revisions may

be dismissed leaving them or liberty to submit applications within one month from today in the subordinate courts praying for permission to produce or get summoned material witnesses and directing the subordinate courts to decide those applications on merits. Such revisions deserve to be disposed of in this manner.

26. In the third category will fall cases where the courts having held that they had discretion in the matter, did not permit the parties to produce or get summoned additional witnesses having regard to the facts and the circumstances of the case. Such orders have been passed in the exercise of discretion. I am unable to hold that they can be questioned under any of the three clauses of Section 115, C.P.C. Such revision petitions also deserve to be dismissed.

27. I have thought it proper to consider cases in the light of the above principles.

28. The case immediately under consideration is one which falls in category No. 1 and the order under revision cannot be revised. The revision is dismissed. No order as to costs.