

**Prem Kumari Vs. Teeja Devi and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/756628](http://sooperkanoon.com/756628)

**Court :** Rajasthan

**Decided On :** Oct-04-2001

**Reported in :** 2002(1)WLC613; 2002(5)WLN495

**Judge :** Arun Madan, J.

**Acts :** Code of Civil Procedure (CPC) - Sections 151

**Appeal No. :** S.B. Civil Revision Petition No. 586 of 2001

**Appellant :** Prem Kumari

**Respondent :** Teeja Devi and ors.

**Advocate for Def. :** S.R. Surana, Adv.

**Advocate for Pet/Ap. :** Suresh Sahni, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**Madan, J.**

1. This revision petition arises out of an order dt. 11.4.2001 of the Addl. DJstl. Judge No. 6, Jaipur City, Jaipur in Civil Suit No. 71/95 whereby an application under Section 151 CPC praying therein for extension of time to lead defendant's evidence was dismissed.

2. Admitted facts are that the suit was instituted on 22.8.89 to which written statement was filed by defendant (petitioner) and after framing of the necessary issues the plaintiff's evidence was closed on 11.12.96 and since then the trial of the suit stands hanged by latitude on the part of the defendant by not leading their evidence by postponing the same for one reason or the other.

3. From the material on record, it also stands established that not less than 35 chances were given to the defendants to lead evidence on their behalf inasmuch as, once the trial Court was directed by this court in one of revisions arising out of the present suit by an order d.t.13.3.92 to expeditiously decide the suit. It was at least expected of the parties to co-operate with the trial Court in concluding the evidence and that apart further on the trial Court on 7.4.99 had declined to grant any further extension of time to lead evidence to the petitioners and closed their evidence against which a revision petition was filed earlier as well by the defendant (petitioner) before this Court. In that petition also this court on 14.11.2000 on the basis of an undertaking of the counsel made on behalf of the petitioners to the effect that the defendants would complete all their evidence within a period of three months, passed following order inter alia:-

'This revision petition has been directed against the order dated 7.4.99 passed by Additional District Judge No. 6, Jaipur City, Jaipur in Civil suit No. 71/95, whereby the evidence of the defendant petitioner has been closed.

The suit is pending right from 1989. The plaintiff completed his evidence in the year 1996. The defendant failed to complete his evidence till 7.4.99, therefore, the impugned order came to be passed.

Counsel for petitioner submits and undertakes that the defendant shall complete all his evidence within a period of three months, to which counsel for respondent has no objection.

After hearing counsel for parties, without going into the merits of the case, the defendant is allowed four months time to complete all his evidence at his own responsibility. In case the defendant fails to complete his evidence within the period of four months, the trial Court shall be at liberty to close the evidence of

defendant and pronounce the judgment. The time shall not be extended except by expressed permission of High Court.

With the above directions, the revision petition is disposed of.'

4. Despite the aforesaid undertaking and further opportunity of leading evidence within four months having been granted by this court in earlier Revision Petition No. 75/99, the defendant- petitioner did not produce her evidence before the trial Court on the dates fixed after direction of this Court specially when the case was taken up by the trial Court on the dates namely; 7.2.01, 13.3.01, 10.4.01 and 11.4.01, whereas an application under Section 151 CPC was moved on behalf of the defendants praying therein for fixing of the date for leading evidence, to which the plaintiff respondent protested by way of filing reply thereto. This application was dismissed by the trial Court by the impugned order. Hence, this revision petition.

5. The contention raised on behalf of the petitioner is that once the presiding officer was not posted in the trial Court there was no legal requirement to produce the witnesses who belong to the places other than Jaipur.

6. Next contention is that the trial Court did not appreciate in proper legal perspective that the pre-emptory orders passed by the Courts, if any, are not punitive in nature and the Courts are not powerless to deal with the events that might arise in between, such pre-emptory orders which are basically to be flouted by such parties who do not intend to obey the rule of law and hence often find ways & means to violate them with impunity just as it has happened in the instant case. Taking stock of the events which have happened as above said In the instant case, I find that there is absolutely no room for compassion or magnanimity in favour of such litigants.

7. On the other hand, learned counsel for the plaintiff respondent vociferously contended that the trial is pending since 1989 and the fate of the suit has been hinging obviously because of the delay on the part of the defendants dally dally tactics for leading evidence, for which the defendant has taken more than four years during which more than 35 opportunities have been afforded to her which

shows her conduct of deliberately committing delay in the matter by filing applications and revision petitions one after the another and even after an undertaking before this Court in her own revision petition to completely adduce her evidence within further four months again she failed to show any regard to the directions of this Court.

8. After having considered the rival contentions and perused the order sheets alongwith a list of dates produced by the learned counsel for the plaintiff respondent to show the conduct of the defendant, prima facie I am of the view that this revision petition must fail. This revision petition is an attempt to defeat the directions of the expeditious trial of the suit. Further extension of time to lead or close the evidence is sought by the defendant merely on the pretext of proper legal perspectives to appreciate under the garb of the presiding officer having not been posted in the trial Court inasmuch as, the defendant fails to show sufficient cause as to why the defendant did not produce on three dates fixed for recording of the evidence of the defendant i.e. 7.2.01, 13.3.01, 10.4.01, and 11.4.01. Rather, instead of adducing any evidence an application was moved under Section 151 CPC on 10.4.01 for extension of time which shows her conduct of dilly dally tactics being adopted on her behalf.

9. No doubt, the presiding officer was not posted in the trial Court but as is apparent from the order sheet itself the proceedings were being drawn by the presiding officer having additional charge of the trial Court and that being so, the presiding officer having additional/link charge of the trial Court (ADJ No. 6) while drawing the proceedings on 7.2.01 and 13.3.01 specifically pointed out that the witnesses are not present and the trial was adjourned to produce the defendant's witness for three times and on all these three dates the defendant failed to produce any evidence or witness; contrarily, moved for extension and insisted to decide the application which was dismissed by impugned order. All these facts show the deliberate conduct of the defendant to adopt dilly dally tactics and such a latitude showing scant regard to the directions of this Court for expeditious disposal of the trial of the suit and having disowned the undertaking on her part makes out no case for any liberal consideration in her favour and no further opportunity can be granted merely on the assertions and assumptions that the

witnesses did not come on the aforesaid dates fixed by the trial Court for producing and adducing evidence on behalf of the defendant in view of legal advise given to the petitioner by her counsel to the fact that since the court has been lying vacant so there was no need for the witnesses to come there. Such an approach under the garb of legal advise cannot be accepted once the learned Advocate who has also been appearing before the trial Court in the suit proceedings and who had also appeared in earlier revision petition had given an undertaking on behalf of the defendants to lead evidence before four months, as is evident from afore quoted order sheet passed by this court in that revision petition.

10. That apart this court in its order dt. 14.11.2000 specifically directed that the trial Court would be at liberty to close the evidence of defendant and pronounce the judgment in case the defendant fails to complete his evidence within four months and further it was specifically made clear that the time shall not be extended except by expressed permission of the High Court.

11. In this view of the matter, I do not find that the trial Court has committed under the impugned order any error muchless a patent error of law and jurisdiction in any manner whatsoever as slated by the learned counsel for the petitioner and furthermore, I do not find that the trial court has committed any error by not appreciating in the proper legal perspective as to the pre-emptory orders. Thus, the trial Court rightly appreciated the pre-emptory orders by not extending the lime on the application of the defendant. Hence, there is no illegality or material irregularity in the impugned order passed by the learned trial Court. Hence, no interference is called for by this Court invoking revisional jurisdiction.

12. As a result of the above discussion, this revision petition fails and is hereby dismissed with costs quantified at Rs.2200/-. The trial Court is directed to proceed further in accordance with law and conclude the trial of the suit without any further delay in the matter. Interim stay order dt. 11.5.2001 stands vacated.