

Romesh Kumar Vs. Chanan Lal

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Court : Jammu and Kashmir

Decided On : Nov-23-1989

Reported in : AIR1991J& K4

Judge : K.K. Gupta, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 115 - Order 18, Rule 3A;
;Jammu and Kashmir Code of Civil Procedure (CPC) , 1977 Smvt. - Order 16,
Rule 21

Appeal No. : C.R. No. 160 of 1989

Appellant : Romesh Kumar

Respondent : Chanan Lal

Advocate for Def. : V.B. Sudan, Adv.

Advocate for Pet/Ap. : R.K. Gupta, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K.K. Gupta, J.

1. Suit filed by Chananlal, respondent herein, for ejectment of Romesh Kumar, petitioner herein, from a shop situate at Parade Ground Jammu is pending disposal in the Court of Sub-Judge, Jammu in which evidence of the respondent-plaintiff was led and thereafter he sought permission for producing himself as his own witness. Said application was resisted by the petitioner-defendant and the learned Sub-Judge, after hearing both the sides, has permitted the plaintiff to appear as his own witness vide order passed on Oct. 11, 1989. Not satisfied with the said order, petitioner has come up in revision before this Court.

2. I have heard the learned counsel for the parties. The controversy centres around presently in this case is regarding the interpretation of Order 18. Rule 3-A, C.P.C. According to this provision of law where a party himself wishes to appear as a witness he shall so appear before any other witness on his behalf has been examined but the Court can, for reasons to be recorded, permit him to appear as his own witness at a later stage. Learned counsel appearing for the petitioner has argued that this provision of law is mandatory in nature as word 'shall' has been used and according to him plaintiff had to appear as his own witness before he had produced other witnesses. His further plea is that the plaintiff has not given cogent reasons for recording his statement after examination of his witnesses and the order of the Court in permitting him to appear as a witness is thus against the above said provision of law, Learned counsel for the respondent, on the other hand, has contended that procedural law cannot be mandatory in nature and abovesaid Rule 3-A is directory in nature as it allows a party to appear as his own witness at a later stage with the permission of the Court for which only reasons are to be recorded and the plaintiff in the present case has shown sufficient reasons for the same.

3. It is true that a duty is cast on the Court by Order 18, Rule 3-A, C.P.C. to record reasons before permitting a party to appear as his own witness at a later stage when its witnesses had been examined by the Court. At the same time it cannot be denied that the rules of procedure are always to be interpreted liberally in order to advance the cause of justice. The word 'shall' used in the above referred rule makes it obligatory for a party to the suit to appear as a witness before any other witness on his behalf is examined. But at the same time if it chooses to appear as

a witness at a later stage, he has to seek permission of the Court and at that time the Court while permitting or refusing him to appear as a witness has to record reasons. In this manner thus this provision is directory in nature and not mandatory. Orissa High Court in AIR 1978 Orissa 1 have treated this Rule mandatory in nature while Madras High Court in AIR 1985 Madras 183 relying upon AIR 1982 SC 1249 has held that Rule 3-A contemplates regarding reasons to be recorded by the Court while permitting party to appear as a witness and it is undesirable for a Court to proceed on oral permission and much worse if such a permission had been granted without reasons. This Court in case Mohanlal v. Vinod Kumari, 1988 Kash LJ 150 has held this rule to be directory in nature. In whatever manner we interpret Rule 3-A it comes out that a party can appear as a witness at a later stage with permission of the Court-if it shows sufficient reasons for it and the Court while permitting it to appear as a witness, after its witnesses had been examined, has to record reasons and to see whether the party is not appearing in order to fill up any blanks or lacuna left out in evidence already given. In the present case learned trial Judge has passed a detailed order while permitting the respondent herein to appear as his own witness and that Court was satisfied about the genuine prayer made by the respondent for recording his evidence. In this manner trial Court has exercised the discretion properly and in a judicious manner. Petitioner has not been able to show that the respondent was seeking permission with some ulterior motive to fill in any lacunae left by his witnesses.

4. For the aforesaid reasons I find no ground to interfere with the order passed by the trial Court and as such this petition is dismissed. Counsel for the parties shall appear before the trial Court on 11-12-19-89.