

Uddhav Das Arora Vs Addl. Civil Judge (Sr. Division) No. 1**Civil Writ Petition No. 1646/2011**

Court: Rajasthan High Court (Jaipur Bench)**Date of Decision:** Sept. 17, 2014**Acts Referred:**

Evidence Act, 1872 " Section 138, 6

Citation: (2014) 4 WLN 518**Hon'ble Judges:** R.S. Chauhan, J**Bench:** Single Bench**Advocate:** Alok Garg, Advocate for the Appellant

Judgement

R.S. Chauhan, J.

The petitioner has challenged the order dt. 12.1.2011, passed by the Additional Civil Judge (SD), No. 1, Bharatpur,

whereby the learned Judge has denied the petitioner an opportunity to cross-examine DW-1 Suresh Kumar Beniwal with regard to four

documents submitted by the petitioner. The brief facts of the case are that the respondent No. 2, UIT, Bharatpur invited applications by 30.1.1998

for allotment of plots in a commercial scheme. The petitioner submitted his application on 29.1.1998. The UIT allotted plot No. 48, Sector-4,

Scheme No. 2, Transport Nagar, Bharatpur to the petitioner through a lottery held on 28.3.1998. The petitioner made the complete payment

against the allotment. The UIT handed over the possession of the plot to the petitioner and executed a registered lease deed on 16.2.2001.

However, on 29.4.2005, the UIT issues a notice to the petitioner to show cause for not cancelling the allotment of the said plot to the petitioner as

allegedly petitioner was found ineligible for allotment of the plot by a committee constituted by the Government. Aggrieved by the said notice, the

petitioner filed a suit for declaration and permanent injunction. During the pendency of the suit, the petitioner obtained four documents from the

UIT, under the RTI Act. On 12.1.2011, the learned trial Court denied the petitioner an opportunity to cross-examine Suresh Kumar Beniwal

(D.W.1) the OIC, with respect to these four documents. Hence, this petition before this Court.

2. Mr. Alok Garg, the learned counsel for the petitioner has vehemently contended that Mr. Suresh Kumar Beniwal was the OIC on behalf of the

UIT, Bharatpur. In his capacity as the OIC, he was supposed to be aware of the facts of the case and also aware of the record of the case. During

the course of his deposition, Mr. Beniwal was confronted with four documents that the petitioner had gotten under the RTI. However, the learned

Judge has denied the petitioner an opportunity to confront the witness with these four documents on the ground that the witness is unconcerned and

unrelated to these documents.

Secondly, according to Section 138 of the Evidence Act, the cross-examination need not be related only to the examination-in-chief, and the other

facts can be brought to the notice of the witness. Therefore, the petitioner should have been given the right to confront the witness with these four

documents.

Thirdly, these documents are related to the issue involved in the case. Under Section 6 of the Evidence Act, these documents are relevant

evidence. Therefore, an opportunity of cross-examination has been denied to the petitioner without any rhyme or reason.

Lastly, that the party has a right to prove his case even from opponent's witness and right to cross-examine from opponent's witness cannot be

denied to the party. In order to buttress this contention, the learned counsel has relied on the case of C.P. Joshi v. Kalyan Singh Chouhan & Ors.,

2011 (4) WLC 110.

3. On the other hand, Mr. Dharmendra Agarwal, the learned counsel appearing on behalf of the respondent No. 2, UIT, Bharatpur, has contended

that none of these documents are relevant to the controversy in issue. Moreover, as these documents relate to the minutes of meeting to which the

witness was not part of. The learned Magistrate was certainly justified in denying the petitioner an opportunity to confront the witness with these

documents. Thus, the learned counsel for the respondent has supported the impugned order.

4. Heard the learned counsel for the parties and perused the impugned order.

5. It is, indeed, trite to state that the scope of cross-examination is larger than the scope of examination-in-chief. For, according to Section 6 of the

Evidence Act, the fact, though not in issue are so connected that the fact in issue has to form part of same transaction, then they become relevant

irrespective of the fact whether these facts occurred at the same time and place or at different time and place. The issues before the learned trial

Court are whether the plot in dispute was allotted by the UIT to the petitioner or not?, Secondly, whether the UIT is legally justified in cancelling

the allotment of the plot or not? These documents relate to the fact that the plot was actually allotted to the petitioner by a duly constituted

committee. Therefore, these documents are irrelevant piece of evidence.

6. According to the Section 138 of the Evidence Act, although a cross-examination may relate to relevant facts, but it need not be confined to facts

to which witness has testified in examination-in-chief. Therefore, a party is permitted to travel beyond the scope of examination-in-chief, and to

confront a witness with facts which may not have been mentioned by him in examination-in-chief. But nonetheless these facts are relevant to the

issue involved in the suit.

7. Mr. Suresh Kumar Beniwal (DW-1), admittedly was Officer-Incharge on behalf of the UIT. As an Officer-Incharge, he is expected to be

familiar with the record of the case, and with the relevant facts of the case. Even if he has not been a member of the duly constituted committee,

which allotted the plot to the petitioner, even then as an OIC, he is supposed to know the facts with regard to the allotment, with regard to the

cancellation, both of which are issues before the civil Court. Therefore, the position taken by the learned Magistrate that since OIC is not a

member of the duly constituted committee, and since these documents do not relate to him, therefore, these documents cannot be used as a basis

of cross-examining the witness, such a stand is clearly untenable. For the reasons stated above, this petition is hereby, allowed. The order

preventing the petitioner from cross-examining Mr. Beniwal qua these documents is set aside. Consequently, the learned Magistrate is directed to

recall Mr. Suresh Kumar Beniwal, as DW-1, and to give opportunity to the petitioner to cross-examine him on the basis of the four documents,

which the petitioner has procured under the RTI Act. The said exercise shall be carried out within a period of two months from the next date given

by the learned trial Court.