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**(1956) 12 MP CK 0005**

**Madhya Pradesh High Court (Indore Bench)**

**Case No:** C. Rev. No. 429 of 1956

Kurban Hussain

APPELLANT

Vs

Abdul Karim

RESPONDENT

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**Date of Decision:** Dec. 19, 1956

**Citation:** (1957) J LJ 917

**Hon'ble Judges:** S.M. Samvatsar, J

**Bench:** Single Bench

**Advocate:** R.G. Waghmare, for the Appellant; N.L. Datta, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

Samvatsar, J.

This revision-application is filed by the Defendant No. 2.

2. The opponent No. 1 filed a suit against the Petitioner and the opponent No. 2, in the Court of Civil Judge First Class Indore for recovering a sum of Rs. 784-3-0, The Defendants resisted the suit. The court therefore framed issues and proceeded with the trial.

3. During the course of the trial, the case was fixed for evidence of the Defendant No. 2 on 20-11-1956. The Defendants paid process for summoning witnesses. On the date of hearing, the witnesses though served did not turn up. The Defendant himself was absent. On his behalf an application was filed in which it was stated that the Defendant was ill and was therefore unable to attend the court and a prayer was made for adjourning the case to some other date, The application was accompanied by medical certificate.

4. The trial Court however, refused to adjourn the case. It did not disbelieve the Defendant's allegation that he was ill. The order of the learned Judge indicates, that ordinarily, he would have adjourned the case on payment of costs, but he did not think it proper to do so, because the Defendant had not paid the costs previously

ordered. The result was that the court closed the evidence of the Defendant No. 2 and fixed the case on 26-11-1956 for arguments.

5. On 26-11-1966 the Defendant was present along with his witnesses. He applied to the court to record his evidence, but the court refused to do so because it did not feel that there were any sufficient grounds to review its order dated 20th November, 1956. Aggrieved by this order the Defendant No. 2 has preferred this application.

6. It is contended by Mr. Waghmare, learned Counsel for the Petitioner that it was incumbent on the court to examine his evidence when the Defendant No. 2 himself was present in court with his witnesses and that the court had acted illegally in refusing to record evidence of the Defendant and his witnesses.

7. I think that the contention raised by the learned Counsel deserves consideration.

8. The Plaintiff had already closed his evidence on 18-9-1956 and no prejudice was likely to be caused to him by examining the Defendant's evidence on 26-11-1956 which was the date fixed for arguments. It is open to the parties to produce their evidence in court before the case is finally decided and to request the court to examine them, and the court is in my opinion bound to examine the witnesses unless it be of the opinion, that in doing so the other side is likely to be prejudiced or put to serious inconvenience. Mr. N.L. Datta, learned Counsel for opponent No. 1 did not suggest that there was any prejudice likely to be caused to the Plaintiff nor has the trial court rejected the Defendant's prayer for examining himself and his witnesses who were present in court on any such ground the Defendant's prayer was rejected because the Defendant had in the past, not paid the costs as ordered by court. I do not think, the court was justified in doing so. The court did not order costs to be paid as a condition precedent to the examination of the Defendant's evidence. The costs were ordered to be paid in respect of the matter in which he had nothing to do with the examination of the Defendant's witnesses. How could Defendant's failure to pay costs as previously ordered in connection with the other matters be a ground for the court to refuse his request for examining the witnesses who were in attendance, is difficult to understand. I am, therefore of the opinion, that the court was not justified in refusing to consider the Defendant's application on merits, because he had committed a default in respect to payment of costs awarded in connection with other matters. No party can be deprived of his right to examine witnesses kept present by him unless there are adequate grounds to do so. Default in respect of the payment of costs previously awarded cannot in the circumstances of this case be considered to be an adequate ground to shut out the Defendant's evidence.

9. I therefore allow the revision-application, set aside the order passed by the trial Court on 26-11-1956 and send back the case with the following directions:

(1) That the parties shall appear in court on 31st December, 1956 on which date, the court will fix a further date for examining the evidence of Defendant No. 2.

(2) On the date so fixed, the Defendant No. 2 will produce his witnesses and will remain present in court for being examined. On that date the court will examine such witnesses as are kept present and will not further adjourn the case to accommodate the Defendant or his witnesses. The court will thereafter proceed to dispose of the case according to law.

10. Mr. Waghmare, learned Counsel for the applicant, is also, prepared to deposit costs, and he will do so on 31-12-1956.

11. In view of the circumstances of this case, I leave the parties to bear their own costs in this Court.