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**(1994) 12 MP CK 0014**

**Madhya Pradesh High Court**

**Case No:** Civil Rev. No. 1262 of 1994

Amarchand Parakh

APPELLANT

Vs

Laxmi Prasad Agrawal

RESPONDENT

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**Date of Decision:** Dec. 13, 1994

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 16 Rule 19, Order 16 Rule 21, Order 26 Rule 4, Order 26 Rule 4(1)

**Citation:** (1994) ILR (MP) 478 : (1996) JLJ 203 : (1996) 1 MPJR 90 : (1996) 41 MPLJ 711 : (1996) MPLJ 711

**Hon'ble Judges:** D.P.S. Chouhan, J

**Bench:** Single Bench

**Advocate:** H.B. Agarwal, for the Appellant; Abhay Sapre, for the Respondent

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

D.P.S. Chouhan, J.

The present revision is the outcome of the order dated 3-8-1994 passed on the application of the defendant under Order 26, Rule 4, Civil Procedure Code.

The trial Court rejected the application on the ground that the defendant has not shown sufficient cause that why the witness cannot come to the Court.

Heard Shri H. B. Agarwal, learned counsel for the applicant and the learned counsel for the non-applicant, Shri Abhay Sapre.

Learned counsel for the applicant submitted that under Order 16, Rule 21, CPC the Court cannot order a person to appear before the Court and to give evidence as the witness about whom a prayer for examination on commission was made, was residing beyond the local limits of Court's ordinary jurisdiction and also beyond the

limit provided under the provision. This submission did not find favour as the witness can be produced under Rule 1-A of Order 16. But it is not necessary to deal on this point as the revision application can be disposed of on the very basis of the order as is stated above, that it has not been disclosed i.e. sufficient cause has not been shown as to why the witness cannot come before the Court.

This is not the requirement under Order 26, Rule 4, Civil Procedure Code.

The proviso to Rule 4(1) of Order 26, CPC which is relevant in the matter is extracted below :-

"Provided that where, under Rule 19 of Order XVI, a person cannot be ordered to attend a Court in person, a commission shall be issued for his examination if his evidence is considered necessary in the interest of justice."

It does not say that the cause should be shown that why the witness cannot come to the Court. The requirement is that where under Rule 19 of Order XVI, a person cannot be ordered to attend the Court in person, a commission shall be issued for his examination if his evidence is considered necessary in the interest of justice.

Thus, two things are essential, first, the requirement of Order 16, Rule 19 must be satisfied. Secondly, the evidence of the witness sought to be examined on commission must be considered necessary in the interest of justice by the Court.

No such finding has been recorded by the Court on the aforesaid aspects. The order is accordingly found lacunic and suffer from material irregularity and deserves to be set aside.

Revision is accordingly allowed. The impugned order is set aside. It would be open for the trial Court to pass a fresh order in accordance with law. No order as to costs.