

(1975) 11 MP CK 0001

Madhya Pradesh High Court (Gwalior Bench)

Case No: C.R. No. 361 of 1975

Dwarka Prasad Lalchand

APPELLANT

Vs

Rajkunwarbai Balkishan Bawari

RESPONDENT

Date of Decision: Nov. 13, 1975

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 16 Rule 10

Hon'ble Judges: U.N. Bhachawat, J

Bench: Single Bench

Advocate: J.R. Sharma, for the Appellant; H.G. Mishra, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

U.N. Bhachawat, J.

This is a revision by the defendant applicant directed against the order dated 22-7-1975 in Civil Suit No. 86-A/68 by the Fourth Civil Judge, Class II, Gwalior.

2. The undisputed facts leading to the present revision are these: The applicant paid the process fee for summoning his witnesses for 22-7-1975. The summons of all the witnesses except those of Babulal and Peerchand were returned unserved. Witnesses Babulal and Peerchand did not appear on the date despite service. The trial Court Vide the impugned order, ordered for issuing bailable warrant of Rs. 500 each against all the witnesses including those whose summons had returned unserved. Hence, this revision petition.

3. The contention raised by the learned counsel for the applicant was that the Court has no jurisdiction to issue a coercive process against witnesses except under the conditions mentioned in Order 16, Rule 10 of the CPC (hereinafter referred to as the Code). In the instant case, no coercive process could be issued against the witnesses Ravikant, Kailashchand, Ramprakash s/o Phoolchand, Ramprakash s/o Asharam,

Vimalchand s/o Premchand and Ramprasad (name stated as recorded in this Court order sheet dated 29-7-1975) whose summons had returned unserved. His argument was that the trial Court having acted in violation of the provisions contained in Order 16, Rule 10 of the Code, has assumed a jurisdiction which was not vested in it. He relied on a decision of this Court in *Shah Laxmichand v. Rup Singh* 1967 MPLJ 70. The learned counsel for the non-applicant, combating the contention of the learned counsel for the applicant, contended that the applicant has no locus standi to file the present revision petition inasmuch as the aggrieved parties are the witnesses against whom the warrants have been ordered to be issued and that the suit out of which the revision arises being a suit for ejectment, in order to drag on the suit the witnesses are not being got served by the applicant purposefully.

4. I shall first deal with the question of locus standi. The object behind Order 16, Rule 10 of the Code is to assist the parties in procuring the attendance of the recalcitrant witnesses. It is a matter of common knowledge that a party runs a risk of his witnesses, whose attendance is procured by a warrant turning hostile to it on account of the process of warrant, being issued against them. Each party is interested in seeing that his claim is not jeopardised by the creation of a situation--unwarranted by law which may result in providing a cause for their turning hostile to it. In the light of this discussion, I am of the view that the applicant is an aggrieved party and has a locus standi to maintain this revision.

5. Now turning to the merits of the impugned order, it would be useful to quote herein below sub-rules (2) and (3) of Order 16 of Rule 10 of the Code which call for interpretation for deciding the instant matter:--

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under Rule 12.

On the analysis of the forequoted sub-rule (2) for invoking the powers under it, the following are the essential ingredients:--

(a) the Court has reason to believe that the evidence of the witness or the production of the document called from him is material;

(b) that the witness summoned has without lawful excuse failed to attend or to produce the documents in compliance with the summons; or

(c) that the witness has intentionally avoided service.

6. In the instant case, it is an admitted position that except the two aforesaid witnesses, namely Babulal and Peerchand, the summons on the other witnesses named in paragraph 3 of this judgment were not served for 22-7-1975. There is no mention in the impugned order that these unserved witnesses had intentionally avoided the service. It can therefore, unhesitatingly be said that the conditions precedent for bringing into play the provisions of the aforesaid Rule 10 were non-existent on the day the impugned order was passed so far as it relates to the unserved witnesses. The provisions contained in Order 16, Rule 10 of the Code are of a penal nature and, therefore, strict compliance of the procedure laid down therein is essential. I am supported in my view on the interpretation of this rule by a Division Bench decision of this Court in Shrikrishan Das v. Dabubir 1963 JLJ 73. Thus it is manifest that the trial Court has, by ordering the issuance of a coercive process against the unserved witnesses in absence of the conditions laid down in Order 16, Rule 10 conferred upon itself a jurisdiction which it did not possess.

7. In the light of the aforesaid discussion, the impugned order, to the extent it relates to the issuance of bailable warrant for Rs. 500 each against Ravikant, Kailashchand, Ramprakash s/o Phoolchand, Ramprakash s/o Asharam, Vimalchand s/o Premchand and Ramprasad, deserves to be set aside.

8. In this case, on 29-7-75 when this revision was admitted and the operation of the impugned order was stayed against the aforesaid unserved witnesses, it was made clear in that order that that order did not bar issuance of summons to those witnesses. I would, therefore, like to observe that in case summons were issued to these witnesses subsequent to the impugned order and in compliance to those summons if they have failed to appear without any lawful excuse, the trial Court is free to issue coercive process if it so thinks fit in exercise of its powers under Order 16, Rule 10 of the Code and this order would not come in this way.

9. In view of the fact that the suit is pending since the year 1968 as indicated by its registration number, the trial Court is directed to expedite its disposal by fixing an early date of hearing and taking it day after day. The parties are directed to appear before the trial Court on 2-12-1975.

10. In the result, this revision petition is partially allowed and the impugned order, so far as it relates to the issuance of the bailable warrants of Rs. 500 each against Ravikant, Kailashchand, Ramprakash s/o Phoolchand, Ram Prakash s/o Asharam, Vimalchand s/o Premchand and Ramprasad for their non-appearance on 22-7-1975 is set aside. In the circumstances of this case, I order the parties to bear their own costs.