

## Barelal Dhakad Vs Brijesh Kumar Bansal

**Court:** MADHYA PRADESH HIGH COURT

**Date of Decision:** Feb. 10, 2017

**Acts Referred:** Code Of Civil Procedure, 1908 (CPC) â€” Order 20 Rule 1, Order 47 Rule 1, Order 9 Rule 7, Order 18 Rule 17

Constitution Of India, 1950 â€” Article 227

Limitation Act, 1963 â€” Section 5

**Citation:** (2017) CJ 79 (MP) : (2017) 2 MPLJ 132 : (2017) 1 MPWN 256

**Hon'ble Judges:** Vivek Agarwal, J.

**Bench:** Single Bench

**Advocate:** Shri Raghvendra Dixit, Learned Counsel, for the Petitioner; Shri Mahesh Goyal, Learned Counsel, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

Vivek Agarwal, J.â€”Petitioner has filed this petition under Article 227 of the Constitution of India being aggrieved by order dated 10.3.2016

passed in civil suit No.1-B/2014 passed by the First Additional District Judge, Jaura, Distt. Morena, whereby after closing of the case for

judgment, learned First Additional District Judge, Jaura, entertained the application under Order 47, Rule 1 CPC to review an order dated

26.9.2012.

2. It is submitted by the learned counsel for the petitioner that the impugned order is arbitrary and illegal and suffers from manifest error inasmuch

as said application for reviewing the order could not have been allowed by the learned trial Court. Petitioner has placed reliance on the judgment of

the Supreme Court in the case of Arjun Singh v. Mohindra Kumar and others as reported in AIR 1964 SC 993 wherein the Supreme Court

has held that once the hearing starts, the Code contemplates only two stages in the trial of the suit, namely (i) where the hearing is adjourned or (ii)

where hearing is completed. Where hearing is completed, the parties have no further rights or privileges in the matter and it is only for the

convenience of the Court that Order 20, Rule 1 permits judgment to be delivered after interval after the hearing is completed. Thus, there is no

hiatus (that is break) between the two stages of reservation of judgment and pronouncing the judgment so as to make it necessary for the Court to

afford to the party the remedy of getting orders passed on the lines of Order 9, Rule 7 . Learned counsel for the petitioner has also drawn attention

of this Court to the provisions contained in Order 20, Rule 1 CPC which provides that the Court after case has been heard, shall pronounce

judgment in open Court, either at once or, as soon thereafter as may be practicable, on some future day; and when the judgment is to be

pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders.

3. On the other hand, learned counsel for the respondent submits that there is no bar or embargo on trial Court to review its own order before

judgment was passed. He has placed reliance on the provisions contained in Order 18, Rule 17 CPC which provides that the Court may at any

stage of a suit recall any witness who has been examined and may subject to the law of evidence for the time being in force put such questions to

him as the Court may think fit. He submits that the words at any stage occurring in the section would mean that any stage before the judgment is

pronounced. The stage of the case alone should not weigh with the Court to such an extent as to overshadow the other aspects of the matter. In

this regard, provisions of Order 47, Rule 1 which deals with the review are necessary to be taken into consideration inasmuch as Order 47, Rule 1

provides that any person considering himself aggrieved by a decree or order from which no appeal is allowed can seek review. In fact, there is an

inherent power of review vested in the Court and Court could have exercised such power, and therefore, the law laid down in the case of Arjun

Singh (supra) which is in relation to the facts pertaining to filing of an application under Order 9, Rule 7 CPC will not be applicable to the facts and

circumstances of the present case.

4. By the impugned order, after allowing the application for review and one under Section 5 of the Limitation Act, the learned trial Court has

directed that promissory note in question filed by the plaintiff on record be exhibited in due course. This is squarely covered by the provisions

contained in Order 18, Rule 17 CPC which provides that at any stage such application can be moved. This view also gets support from the law

laid down by the Madras High Court in the case of S.S.S. Durai Pandian v. S.A. Samuthira Pandian as reported in AIR 1998 Madras 323.

5. In view of the aforesaid, I am of the opinion that there is no perversity in the impugned order dated 10.3.2016 and thus the petition fails and is

dismissed.