REVISIONAL CIVIL.

Before R. S. Sarkaria, J.

BALWANT SINGH AND ANOTHER,—*Petitioners.*

versus

FIRM RAJ SINGH-BALDEV KISHEN,—*Respondents.*

Civil Revision No. 697 of 1968.

October 17, 1968.

Code of Civil Procedure (Act V of 1908)—Order 16, Rules 8 and 9—Dasti Process for witnesses—Issue of—Whether prohibited—Such process—Whether should only be issued at the request of the party—Evidence of a party—Whether should be shut out on his negligence to deposit process fee—Issue of a summon to a witness—Whether can be refused on ground of late application or refusal of a party to bring witnesses himself.

Held, that there is nothing in the Civil Procedure Code which expressly inhibits the service of summonses by the mode, which has come to be known as *Dasti* process. On the other hand, the language of Rule 8 of Order 16 is very flexible. The word 'as nearly as may be' in that Rule are wide enough to permit the issue of Dasti process for witnesses, also. However, such process is not to be issued in the first instance. It is to be issued only *if* the *party requests* for the issue of such process or is otherwise ready and willing to do so, when he is precluded by his own default from receiving further assistance of the Court for the issue of process or summonses for service in the normal way through the process-serving Agency of the Court. In such cases, permission is granted to the defaulting party to take out Dasti process only as a matter of concession. (Para 7)

Held, that promptitude and despatch in the dispensation of justice is a desirable thing but not at the cost of justice. All rules of procedure are nothing but handmaids of justice. They cannot be construed in a manner which will hamper justice. As a general rule, evidence should never be shutout. The fullest opportunity should always be given to the parties to give evidence if the justice of the case requires it. It is immaterial if the original omission to give evidence or to deposit process-fee arises from negligence or carelessness. However, negligent or careless may have been the first omission and, however, late the proposed evidence, it should be allowed if that can be done without injustice to the other side. *There is no injustice if the other side can be compensated by costs.*

(Para 12)

Held, that Rule 9 of Order 16 of the Code which provides that summonses must be served on the witnesses in sufficient time is only a Rule in favour of the *witnesses.* It enjoins due diligence on the party. But it does not empower the Court to refuse the issue of summons to a witness on the ground of late application. Summonses cannot be refused on the ground that the party had refused to bring his witness himself or to carry out illegal order of the Court for Dasti service on the witnesses.

(Para 14)

Petition under Section 115 of the Code of Civil Procedure, for revision of the order of Shri Amjad Ali Khan, Sub-Judge, Ist Class, Nabha, dated May 30, 1968, ordering that three defendant's witnesses, for whom process-fee was deposited late be deemed given up.

R. L. BATRA, *ADVOCATE*, for the Petitioner.

R. K. AGGARWAL, *ADVOCATE*, for the Respondent.

JUDGMENT

SARKARIA, J.—The facts leading to Civil Revisions 697 and 698 of 1968 are common and may be set out as under :

Firm 'Raj Singh Baldev Kishan' instituted a suit for permanent injunction restraining the defendants, Balwant Singh and Surjit Kaur, from interfering with the plaintiff's possession of a house. Written statement was filed by the defendants on 31st October, 1967. The case was then fixed for the plaintiff's evidence on 14th December, 1967. On that date, the plaintiff examined 5 witnesses. One witness, who did not appear on that day, was examined on a subsequent date, namely, 15th February, 1968. The plaintiff concluded his evidence on that day. The case was then fixed for 5th April, 1968, on which date the defendants furnished a list of their witnesses. The defendants named Dasaundhi Ram, Pritam Singh, Darshan Singh, and Karnail Singh as their witnesses. They also made an application for summoning the records of another case. Dasaundhri Ram actually appeared in response to the summons on 6th May, 1968. He could not be examined on that date because the Presiding Officer of the Court was on leave. He was bound down to appear on 17th May, 1968. The other witnesses could not be served. The Court, therefore, ordered that bailable warrants of arrest be issued against Dasaundhi Ram, and the others three be summoned. The case was adjourned to 30th May, 1968, for the evidence of these witnesses. The defendant (Balwant Singh) did not deposit the process-fee within the time fixed by the Court as he was serving in the Army at Chandigarh. He sent the money by money-order to his counsel, only after the expiry of the period fixed by the Court. The Court had also directed that the process should be issued in duplicate, one should be sent for service through the proces-serving Agency of the Court, and a duplicate process be issued to the defendant or his agent for serving on his witnesses, personally. On the date fixed, i.e., 30th May, 1968, the Court

made the following order, which is being impugned in Civil Revision 697 of 1968:—

> "Dasondhi Ram, D.W., not summoned for lack of P.F. Service of Pritam Singh and Darshan Singh could not be issued because the P.F. was deposited late. The defendant was directed on the last date to get duplicate summons Dasti and get service effected but he failed to do so. In the circumstances, the three D. Ws would be deemed given up. Copy of the order to be proved from the file proposed to be summoned from the Record Room not filed. It is stated that the same would be issued in the next few days. Therefore, to come up on 14th June, 1968. No other date will be given."

(2) Thereafter, the defendant filed a copy of the order from the records of the case which were sought to be summoned. However, he failed to take the process Dasti, i.e., by hand. Thereupon, the trail Court passed the order, dated 16th July, 1968, which is being impugned in Civil Revision 698 of 1968. That impugned order reads as follows :—

> "No evidence of the defendant is present. He has applied for summoning a file from the Record Room and it was ordered that he would take requisition slip Dasti. However, the defendant did not take the slip Dasti. As ones (?) it would be presumed that he was not interested in summoning the file. Certain documents tendered. A date for examining the defendants is requested. To come up for defendant's statement and plaintiff's rebuttal on 30th July, 1968."

(3) Firstly, it is contended by the learned counsel for the petitioner that the defendant was serving in the Army and was posted at a station away from Nabha. Consequently, he could neither deposit the process-fee within the unreasonably short period of 3, days, fixed by the trial Court, nor could he take out Dasti process either for service upon the witnesses or for summoning the file of another case from the Record Room. In the peculiar circumstances of the case, therefore, it was unfair on the part of the Court to shut

out the defendant's evidence on account of his default. It is suggested that the trial Court ought to have given another opportunity to the defendant to summon the witnesses and the record through the Court. It is added that the opposite party could be amply compensated with costs. In support of his contention, the learned counsel has referred to *Rupendra Deb Raikut* v. *Ashrumati Debi and others*, (1); *Ralla Ram* v. *Mussammat Rai and others*, (2); *Pandu and another* v. *Rajeshwar and others*, (3); *Bachan Singh* v. *Smt. Sarli and others*, (4); and (*Mohinder Kaur* v. *Gurdev Singh*), (5).

(4) Secondly, it is contended that the issue of Dasti process is a mode of service not recognised by anything contained in Order 16, or any other provision of the Code of Civil Procedure. In support of this contention, he has cited *Roshan Singh* v. *Chiranjilal* (6).

(5) It may be noted that the procedure for summoning and attendance of witnesses is laid down in Order 16, Civil Procedure Code. Rule 1 of that Order, says :—

> "At any time after the suit is instituted, the parties *may obtain*, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents."

(6) A proviso has been added to this rule by the Punjab High Court. That provisois not material for the decision of the case before me. Suffice it to say that the language of Rule 1, shows that the duty for obtaining process or summonses for enforcing attendance of witnesses has been cast by this Rule on the party concerned. This Rule, however, does not say how those summonses, which are to be obtained by a party, are to be served. Rule 1-A, however, indicates that a party who wants to examine witnesses may not apply for any summonses under Rule 1. He may himself bring the witnesses whose

(1) A.I.R. 1951 Cal. 286.
(2) A.I.R. 1922 Lah. 63.
(3) A.I.R. 1924 Nag. 271.
(4) 1965 P.L.R. Short Notes 118
(5) C.R. 449 of 1968.
(6) A.I.R. 1953 M.B. 48.

names appear in the list, to give evidence or to produce documents. Some High Courts, for instance, Bombay and Gujrat, have added Rule 1-B, which says that the Court may, on the application of any for a summons for the attendance of any person, permit that service of such summons shall be effected by such party. But no such amendment has been made by the Punjab High Court. The material Rule, however, which indicates how the summonses are to be served, is Rule 8. It reads :—

> "Every summons under this Order shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V, as to proof of service shall apply in the case of all summonses served under this rule."

(7) The Allahabad, Andhra Pradesh, Assam, Calcutta, Kerala, Madras, Orissa, Patna and Rajasthan High Courts have inserted express provisions either by way of amending Rule 8, or adding a new Rule in this Order, which enables a Court to deliver the summonses to a party applying for such summonses for making service on the witnesses. The Punjab High Court has not inserted a similar provision either in Order 16, or anywhere else in the Code of Civil Procedure, expressly authorising the delivery of summonses for witneses to the party applying for them for effecting service on his witnesses. But it can be said with equal force that there is nothing in the Civil Procedure Code which expressly inhibits the service of summonses by this mode, which has come to be known as Dasti process. On the other hand, the language of Rule 8, is very flexible. The words 'as nearly as may be' in that Rule are wide enough to permit the issue of Dasti process for witnesses, also. However, it seems to me that such process is not to be issued in the first instance. It is to be issued only *if* the *party requests* for the issue of such process or is otherwise ready and willing to do so, when he is precluded by his own default from receiving further assistance of the Court for the issue of process or summonses for service in the normal way through the process-serving Agency of the Court. In such cases, permission is granted to the defaulting party to take out Dasti process; only as a matter of concession.

(8) In *Roshan Singh* v. *Chiranjilal*, (6), the trial Court had refused to issue summonses to the witnesses of a party on the ground that the applicant had failed to accompany the process-server for the service of the summonses on the witnesses. The party was also

directed to produce his witnesses in the Court himself on the next day of hearing and to pay costs of the adjournment. Dixit J. held that the order of the trial Court was clearly illegal, because there was no provision in the Code of Civil Procedure casting an obligation on the party to accompany the process-server for having the summonses served on his witnesses. It is the duty of the process-server to serve the summonses and if he fails to do so, parties cannot be punished for his negligence.

(9) In that case, the summonses had been issued to the applicant's witnesses and the process-server returned them unserved with the remark that the applicant did not accompany him for effecting the service. In these circumstances, it was held that the trial Court was not justified in giving adjournment costs to the non-applicant and directing the applicant to bring his witnesses with him on the next date of hearing.

(10) I have no quarrel with the principle enunciated by Dixit, J. in *Roshan Singh's case*. I have already observed above that the Court cannot compel a party against his will, to obtain summonses and to serve them either himself or through his agent on the witnesses. But where the summones to the witnesses cannot be issued owing to the default of the party concerned, such as non-deposit of process-fee or belated deposit of process-fee so that there is not sufficient time for the issue and service of the summonses on the witnesses, he disentitles himself to the assistance from Court. The Court may either refuse to grant adjournment *or* permit him at his own request to obtain summonses for service on the witnesses himself or through his agent. But even in such a case the Dasti process is to be issued only at the *request* of the party and not otherwise.

(11) In the case before me, the trial Court directed the defendant to deposit process-fee within 3 days for summoning his witnesses named in the list for 30th May, 1968. The defendant actually deposited the process-fee on the 8th of 9th day, i.e., the 28th May, 1968. Only two or three days were left for effecting service. This time was obviously too short for this purpose. But in view of the fact that the defendant was not residing at Nabha and was away serving in the Army, the delay in depositing the process-fee could not be said to be deliberate. Nor was this circumstance by itself sufficient to jump to the conclusion that the defendant was deliberately indulging in dilatody tactis or abusing the process of the Court

Indeed, no such finding has been recorded in the impugned order by the learned trial Judge. I, therefore, think that the learned trial Judge was overhasty in passing the impugned order.

(12) Promptitude and despatch in the dispensation of justice. is a desirable thing but not at the cost of Justice. All rules of procedure are nothing but handmaids of justice. They cannot be construed in a manner which would hamper justice. As a general rule, evidence should never be shut out. The fullest opportunity should always be given to the parties to give evidence if the justice of the case requires it. It is immaterial if the original omission to give evidence or to deposit process-fee arises from negligence or carelessness. As observed by the Calcutta High Court in *Rupendra Deb Raikut's* (1); however negligent or careless may have been the first omission and however late the proposed evidnece, it should be allowed if that can be done without injustice to the other side. *There is no injustice if the other side can be compensated by costs.*

(13) A Single Judge of this Court in *Bachan Singh's case*, (4), has laid down that where there had been no effort on behalf of the petitioner to prolong the proceedings or he was not guilty of any deliberate default in summoning his witnesses, the trial Court would not be justified in refusing assistance to the petitioner to secure the attendance of his witnesses.

(14) It must be remembered that Rule 9, of Order 16, which provides that summonses must be served on the witnesses in sufficient time is only a Rule, in favour of the *witnesses*. It enjoins due diligence on the party. But it does not empower the Court to refuse the issue of summons to a witness on the ground of late application. Summonses cannot be refused on the ground that the party had refused to bring his witnesses himself or to carry out an illegal order of the Court for Dasti service on the witnesses. Only if the Court finds that the issue of the summonses would amount to an abuse of the process of the Court, has it the inherent power to refuse to summon witnesses. See *Sundaranudi china Lakshmayya* v. *K. Suryanarayanda*, (7).

(7) A.I.R. 1958 A.P. 254.

Thus, contention No. 1, is not utterly without force; contention No. 2, is irrefutable.

(15) Regarding the order impugned in Civil Revision 698, of 1968, it may be observed that it is manifestly erroneous in law. Private persons or parties to a litigation cannot be allowed to bring or handle judicial records in this manner. As already noticed above, the petitioner had, prior to the date of the impugned order, furnished a copy of the document, the original of which was in the record summoned. In no case, therefore, the process should have been issued Dasti casting the obligation on a party to bring the requisite record himself.

(16) For the foregoing reasons, I would hold that the impugned orders in Civil Revisions 697, and 698, of 1968, are clearly erroneous and unjust. I would, therefore, allow these revision-petitions, set aside those orders, and send the case back to the learned Subordinate Judge, Nabha, with the direction that he should give further opportunity to the defendant to summon his witnesses and the records through the Court on deposit of the process-fee within a reasonable time to be fixed by the Court. It will, however, not fetter the discretion of the trial Court to refuse further assistance in the matter, if for reasons, to be recorded, it comes to the finding that the defendant is intentionally prolonging the litigation and abusing the process of Court.

(7) Costs of both these revision-petitions shall, however, abide the decision of the suit in the Court below. Parties are directed (through their counsel) to appear in the Court of the Subordinate Judge First Class, Nabbha, on 28th October, 1968.

K.S.K.

CIVIL MISCELLANEOUS.

Before Daya Krishan Mahajan and Prem Chand Jain, JJ.

KEHAR SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 2367 of 1968.

October 17, 1968.

Punjab Cattle Fairs (Regulation) Act (VI of 1968 as amended by XVIII of 1968)—Section 2(bb)—Definition of 'Cattle Fair'—Whether suffers from