

natural justice, which are enshrined in the guarantee of rule of law contained in Article 14 of the Constitution."

As already stated, the petitioner in this case had submitted his representation which was disposed of and nor is it a case where benefit, as referred to in **Chopra's** case is being withdrawn.

(25) For the foregoing reasons, we find no merit in this writ petition which is hereby dismissed. In the peculiar circumstances of this case, there will be no order as to costs.

Prem Chand Pandit, J.—I agree.

K.S.K.

REVISIONAL CIVIL

Before Gurdev Singh, J.

KARTAR SINGH,—*Petitioner.*

versus

HARI SINGH AND OTHERS,—*Respondents.*

Civil Revision No. 204 of 1968

March 14, 1969.

Code of Civil Procedure (V of 1908)—Section 115, Order 26 and Schedule 1, Appendix H, Form 7—Order of a Court issuing interrogatories for examination of witnesses—Interference of, in revision by High Court—Whether warranted—Interrogatories issued to a witness—Such witness—Whether can be put further questions orally—Open commission for examination of a witness—Court—Whether can specify points for such examination.

Held, that the various provisions of Order 26 of the Civil Procedure Code confer authority upon the Court to issue commission of various types, one of them being for the examination of witness, who on account of infirmity, sickness or statutory exemptions etc. are unable to attend the Court, as well as of those witnesses who are residing more than 200 miles beyond the jurisdiction of the Court and cannot be compelled to attend the Civil Court as witnesses. The parties or their counsel may well consider it advisable not to incur the expenditure of proceeding there personally and engaging a counsel or taking their lawyers with them, and their purpose may be adequately served by merely having interrogatories issued for the examination of such a witness. If in those circumstances,

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one of the parties applies for issue of interrogatories and the Court allows the examination of a witness on interrogatories, the order cannot be considered as without jurisdiction so as to warrant the interference of the High Court under section 115 of the Code. The issue of commission for examination of a witness is just a step in the aid of the disposal of a suit, and if such a step is taken to expedite the proceedings and to minimize the cost to the parties and does not subject any of the parties to any hardship or disadvantage the order passed by the Court issuing interrogatories for the examination of a witness cannot be considered to be not in the interest of justice or suffering from any defect of jurisdiction, so as to require interference by the High Court. (Para 5)

Held that if a party gets interrogatories issued for the examination of his witnesses, he cannot claim the liberty to put further questions orally to the witness concerned. If he is of the opinion that the questions framed by him for the examination-in-chief and re-examination of his witness do not serve his purpose and are not adequate to elicit the relevant facts from the witness concerned, then the obvious course for him is to ask for an open commission. (Para 5)

Held that the words "on points specified" in Form 7 of Appendix H, Schedule I of the Code, are applicable where a witness is to be examined on open commission. The Court while issuing an open commission has authority to specify the points on which the evidence of the witness is to be taken. (Para 3)

Petition under Section 115 Civil Procedure Code and Article 227 of the Constitution of India for revision of the order of Shri Rajinder Paul Gaiind, Sub Judge 1st Class, Amritsar, dated 22nd January, 1968, disallowing the objection directing that the note at the end of the interrogatories be deleted.

K. L. KAPUR, ADVOCATE, for the Petitioner.

H. L. SARIN AND H. S. AWASTHY, ADVOCATES, for the Respondents.

JUDGMENT

GURDEV SINGH, J.—The petitioner Kartar Singh is one of the defendants in a suit brought by Hari Singh, respondent as far back as 13th September, 1965, for recovery of Rs. 16,500 on account of arrears of rent and in the alternative for damages for use and occupation of the property situate in Amritsar. On 28th December, 1967, he applied for issue of commission to examine Faqir Chand, who was stated to be residing at Indore as his witness. His prayer having been accepted, he put in interrogatories for the examination of the witness appending the note: "Other questions at the spot". The plaintiff objected to the various questions as well as this note. The learned Subordinate Judge, First Class, Amritsar, while finding that the questions framed for the examination of the witness by the

defendant were in order, however, directed that the note "Other questions at the spot" be deleted. It is against this latter part of the order that the defendant Kartar Singh has approached this Court for revision under section 115 of the Civil Procedure Code read with Article 227 of the Constitution.

(2) Mr. K. L. Kapur, appearing for the petitioner, has urged that the learned Subordinate Judge had no jurisdiction to delete the above note to the interrogatories whereby the petitioner had reserved his right to put further questions other than those specified in the interrogatories filed by him, to his witness Faqir Chand, at the time of his examination on commission. In this connection, he points out that in form 7 contained in Appendix H of Schedule 1 to the Civil Procedure Code for examination of witnesses on commission, it is stated :—

"The evidence should be taken in the presence of the parties or their agents, if in attendance, who will be at liberty to question the witness on the points specified. . . ."

(3) The respondents' learned counsel, Mr. H. L. Sarin, however, contends that these words contained in form 7 give right to the parties or their agents to question the witness only in those cases in which open commission is issued for examining a witness and not where a witness is to be examined on interrogatories. In reply, Mr. Kapur argues that the words "on points specified" will have no applicability where a witness is to be examined on open commission, as in such a case there is no occasion for the Court to specify the points on which the witness is to be examined. So far as the latter contention is concerned, I do not think the Court while issuing an open commission has no authority to specify the points on which the evidence is to be taken, and as at present advised, I see no justification for holding otherwise. The decision of Bhandari, C.J., in (*Prem Nath v. Messrs Kaudoomal Rikhiram, etc.*) (1), on which Mr. Kapur has relied in support of the assertion that he has a right to put questions to his witness other than those specified in the interrogatories issued at his instance, does not go to the extent to which Mr. Kapur wishes to take it. On reference to the facts of that case, I find that after Mohan Lal had been examined in-chief in accordance with the interrogatories issued at the instance of the defendants, the plaintiff, who was present in person, expressed a desire to cross-examine Mohan Lal. The Commissioner declined to accede to his request and directed him to obtain an order from the

(1) C.R. 400 of 1953 decided on 12th April, 1954.

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District Judge. The District Judge refused to give such an order, and thereupon the plaintiff came back to the trial Court at Gurdaspur and prayed for an opportunity to cross-examine Mohan Lal. The trial Court disallowed this prayer on the ground that the suit was already nearly one year old. On a petition for revision against this order brought by the plaintiff, it was contended that both the Commissioner appointed for recording evidence and the trial Court were wrong in not affording an opportunity to the plaintiff to cross-examine the defendant's witness Mohan Lal for whose examination the commission had been issued. In dealing with this matter, the learned Chief Justice, after observing that every party to a litigation has an inherent right to cross-examination the witnesses produced by the opposite party, for the test of cross-examination is said to be the highest and the most indispensable known to the law for the discovery of truth, observed as follows :—

This right appears to have been preserved even in cases where witnesses are examined on commission, for sub-rule (1) of rule 18 of Order XXVI provides clearly that where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders. Sub-rule (2) enacts that where all or any of the parties do not so appear, the Commissioner may proceed in their absence. Mr. Shamair Chand, who appears for the defendants, vehemently oppose the request of the petitioner to cross-examine Mohan Lal in person. He contends that it is a well-known practice of subordinate Courts to issue open commissions and to issue interrogatories for the examination of witnesses. If an open commission is issued, it is open to both the parties to the litigation to proceed to the place where the witness is residing and to examine him in the presence of the Commissioner in exactly the same way as he would be examined if he were giving evidence before a Court of law. In other words, the party calling a witness has a right to examine him in chief and the opposite party has a right to cross-examine him. After the cross-examination has concluded, the party calling the witness has a right to re-examine him. Mr. Shamair Chand contends that no open commission was issued in the present case and as the parties had agreed to the issue of interrogatories, the defendant prepared the list of questions which he wanted to put to Mohan Lal and this list was handed over to the

petitioner who put the questions which he wanted to put in cross-examination. The defendant then indicated the questions which he wanted to be put in re-examination. It is contended that as all the relevant questions had already been put it was not open to the petitioner to proceed to Lucknow or at any rate to demand that he should be allowed an opportunity to cross-examine the witness in person. If that opportunity were allowed to him and he is allowed to cross-examine the witness, the questions put by the defendant in re-examination would become completely meaningless. I was at one time considerably impressed by this argument, but I find that there is no sanction for the practice which is being commonly followed by subordinate Courts of asking the parties to indicate the questions that are to be put in examination-in-chief, cross-examination and re-examination. On the other hand, this practice appears to be contrary to the express provisions of rule 18 of Order XXVI which, as I have stated already, direct the parties to appear before the Commissioner. The only object for which they can be required to appear before the Commissioner is that they should be in a position to examine, cross-examine and re-examine the witness or witnesses. In the present case, the petitioner was present in person at Lucknow, and Mr. Mahajan states that the defendant was also present at the time alongwith his counsel. It seems to me, therefore, that the request made by the petitioner to cross-examine Mohan Lal should have been readily accepted, particularly as the defendant was present with his counsel and could put such questions in re-examination as he considered necessary."

(4) In this view of the matter, the learned Chief Justice, while accepting the revision petition, made the following order :—

"I would, accordingly, direct the trial Court to issue an open commission for the examination of Mohan Lal in accordance with law."

(5) It is true that the learned Chief Justice has observed that he could find no sanction for the practice which has been continued for years together in the trial Court of issuing interrogatories for the

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examination of witnesses on commission, but with utmost respect, I venture to point out that there is nothing in the Civil Procedure Code to prohibit such a course. The various provisions of Order 26 of the Civil Procedure Code confer authority upon the Court to issue commission of various types, one of them being for the examination of witnesses, who on account of infirmity, sickness or statutory exemptions, etc., are unable to attend the Court, as well as of those witnesses who are residing more than 200 miles beyond the jurisdiction of the Court and cannot be compelled to attend the Civil Court as witnesses. The parties or their counsel may well consider it advisable not to incur the expenditure of proceeding there personally and engaging a counsel or taking their lawyers with them, and their purpose may be adequately served by merely having interrogatories issued for the examination of such a witness. If in those circumstances, one of the parties applies for issue of interrogatories, and the Court allows the examination of a witness on interrogatories, I do not think the order can be considered without jurisdiction so as to warrant the interference of this Court in exercise of its revisional powers under section 115 of the Civil Procedure Code, much less under Article 227 of the Constitution. The issue of commission for examination of a witness is just a step in the aid of the disposal of a suit, and if such a step is taken to expedite the proceedings and to minimize the cost to the parties and does not subject any of the parties to any hardship or disadvantage the order passed by the Court issuing interrogatories for the examination of a witness cannot be considered to be not in the interest of justice or suffering from any defect of jurisdiction, so as to require interference by this Court. Even if the view expressed by the learned Chief Justice is accepted, I do not think the petitioner can insist upon having the interrogatories issued for the examination of his witnesses and at the same time claim liberty to put further questions orally to the witness concerned. If he is of the opinion that the questions framed by him for the examination-in-chief and re-examination of his witness do not serve his purpose and are not adequate to elicit the relevant facts from the witness concerned, then the obvious course for him is to ask for an open commission. From the observations reproduced above from the judgment of the learned Chief Justice in *Prem Nath v. Messrs Kaudoomal Rikhiram and others* (supra) (1), it is abundantly clear that even though in the case with which his Lordship was dealing interrogatories had been originally issued and that too at the request of the opposite party, the learned Chief Justice, while holding that the petitioner had a right to cross-examination and he could put questions beyond those given in the interrogatories, did not permit him to put such questions in the

absence of the other party. On the other hand, his Lordship adopted the course of having a witness examined on open commission, and directed that an open commission shall be issued notwithstanding the fact that previously the witness had been examined on interrogatories. In these circumstances, I am of the opinion that the impugned order of the trial Court directing the deletion of the note "other questions at the spot" cannot be considered to be without jurisdiction or incorrect. If the petitioner is not acting *mala fide* with a view to prolong the proceedings, as complained by the respondents' learned counsel, Mr. H. L. Sarin, he can ask for an open commission instead of putting in interrogatories for the examination of his witness, and even at this late stage, I am prepared to accede to that request. I, accordingly, direct the trial Court to issue an open commission for the examination of the petitioner's witness Faqir Chand if he makes a written application to that effect by 14th April, 1969, and deposits the necessary expenses as determined by the Court for issue of that commission together with Rs. 200 as costs of the plaintiff-respondent in proceeding to Indore and engaging a counsel for that purpose. If the application is not made, or the expenses of the commission and of the opposite party indicated above are not deposited within the time allowed, the trial Court should without delay proceed to implement its earlier order for the examination of Faqir Chand on interrogatories.

(6) In case the plaintiff's suit fails, Rs. 200 which the petitioner has now been asked to deposit on account of the expenses of the plaintiff's going to and engaging a counsel at Indore, will be included in the costs of the suit assessed for the defendant-respondent. The parties are directed to appear in the trial Court on 11th April, 1969.

(7) If interrogatories are to be issued, the petitioner will be given an opportunity by the trial Court to put in interrogatories by way of re-examination as well.

K. S. K.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J., and R. S. Sarkaria, J.

GIANI AND ANOTHER,—*Appellants.*

versus

FINANCIAL COMMISSIONER, PUNJAB, CHANDIGARH (REVENUE)
AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 280 of 1966

March 20, 1969.

Punjab Security of Land Tenures Act (X of 1953)—Section 18—Term 'tenant' in section 18(1)(i)—Whether to be interpreted as defined in section 4(5)