C.W.P. Nos. 743 and 4380 of 1974. We further strike down sub-clause (1) of Clause 3 of the Order being violative of Articles 14 and 19(1) (g) of the Constitution as a result of which the second proviso to rule 174 of the Rules shall stand rendered inoperative. All the writ petitions are consequently accepted with no order as to costs.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia C.J., P. C. Jain and K. S. Tiwana, JJ.

AMRITSAR IMPROVEMENT TRUST, AMRITSAR,—*Petitioner.*

versus

ISHRI DEVI,—*Respondent.*

Civil Revision No. 904 *of* 1978.

March 8, 1979.

Code of Civil Procedure (V of 1908)—Order 18 Rule 3-A—Party desiring to appear as his own witness subsequent to his other witnesses—Permission of the Court—Whether must be obtained before the commencement of his evidence—Such permission—Whether can be taken later.

Held, that a bare reference to the language of Rule 3-A of Order 18 of the Code of Civil Procedure 1908 would make it manifest that the Legislature has undoubtedly laid down the rule that a party appearing as his own witness must so appear before any other witness on his behalf has been examined. However, in equally express terms one exception to the said rule has also been provided by the Legislature itself. This is that with the permission of the Court a party for sufficient cause may be allowed to appear even at a stage subsequent to the examination of one or all of his witnesses. The rule requiring a party to step into the witness-box first is, therefore, not an inflexible one and can be relaxed with the permission of the Court. The language of the statute does not in any way prescribe the precise time at which the permission to appear later is to be secured. It does not say that this must necessarily be in the very first instance before any witness has been examined on his behalf. The statute is, therefore, silent as to the stage at which the permission is to be

secured. Nor can it be said that by necessary intendment the Legislature has laid down that the said permission must be sought at the very inception of the evidence and not later. Indeed, when broadly construed, the intention of the Legislature appears to be that the normal and the ordinary rule prescribed now is that the party appearing as his own witness should do so before any one of his witnesses. However, the rule is not an inflexible or a sacrosant-one and may be expressly deviated from with the permission of the Court based on adequate reasons. No specific stage being prescribed or fixed by the statute for securing such permisssion, a party may perhaps as a matter of abundant caution apply at the stage of commencing his evidence and get the necessary permission and equally, if a sufficient ground is made out, he may secure the same at a later stage. (Para 6)

Case referred by Division Bench Consisting of Hon'ble Mr. Justice D.S. Tewatia and Hon'ble Mr. Justice K.S. Tiwana on 28th September, 1978 to a larger bench for decision of an important question of law involved in the case. The larger Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice P. C. Jain and Hon'ble Mr. Justice K. S. Tiwana finally decided the case on 8th March, 1979.

Petition under section 115 *of C. P. C. for revision of the order of the Court of Shri R. K. L. Tyagi Sub-Judge, Amritsar, dated the 18th February,* 1978 *allowing the plaintiff to be examined as her own witness .*

H. S. Gujral, Advocate with T. S. Gujral, Advocate, *for the Petitioner.*

D. V. Sehgal, Advocate with Kataria, Advocate, *for the Respondent.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Whether the recently inserted Rule 3-A of order 18 of the Code of Civil Procedure mandatorily requires that permission of the Court for a party to appear as his own witness subsequent to his other witnesses should be obtained before the commencement of his evidence and not later, is the rather meaningful question which falls afresh for determination in this reference to the Full Bench.

(2) It is unnecessary to advert to the facts in any great detail as the question aforesaid is primarily legal. It suffices to mention that the plaintiff, respondent herein, sought the permission of the trial Court to examine herself as her own witness after the testimony of two of her witnesses had been earlier recorded. Objection was primarily raised on the basis of Jagannath Nayak v. Laxminarayan Thakur and others (1), that the permission having not been secured at the very inception of the plaintiff's evidence, the Court had no jurisdiction to grant the same later. The trial Court for the reasons recorded in order under revision, however, allowed the plaintiff's prayer to step into the witness-box later. The order aforesaid is under challenge herein and it is equally necessary to advert briefly to the background which has necessitated the reference.

(3) At the time of the admission of this revision petition Jagannath Nayak's case (supra), still held the field and in view of the learned counsel for the petitioner's reliance thereon the case was admitted for hearing to a Division Bench. However, by the time it came up for final hearing, a Division Bench of this Court, to which I was a party in (2) M/s. Kwality Restaurant, Amritsar *v.* Satinder Khanna) dissented from the observations made in Jagannath Nayak's case (supra). However, the Division Bench hearing this case expressed some doubt about the correctness of the view in M/s. Kwality Restaurant, Amritsar's case (supra), and, therefore, referred the matter to a larger Bench, and that is how it is before us now.

(4) At the very outset it may be noticed that some conflict of precedent which existed earlier now stands resolved and there is now no discordant note. As is evident from above, the very cornerstone of the argument in favour of the petitioner was rested on Jagannath Nayak's case (supra): That view has, however, been recently overruled by an exhaustive judgment of a Division Bench of that very Court reported in Maguni Dei *v.* Gaurang Sabu & others (3). Therein it has been held categorically that order 18, Rule 3-A is directory in nature and in proper cases the Court has got the power to accord permission to a party to appear at a later stage even though he may not have done so at the very commencement of his evidence. A similar view has been expressed by the Allahabad High

(1) A.I.R. 1978 Orissa 1.

(2) C.R. 358 of 1978 decided on 26th July, 1978.

(3) 1978 Cuttack Weekly Reporter 107.

Court in the judgment reported as Mohd. Aqil *v.* Alimulla (4). Even in this Court a learned Single Judge in *Niranjan Lal* v. *Punjab State Electricity Board Patiala and others,* (5), has opined to the same effect and, as already noticed, the Division Bench in M/s. Kwality Restaurant, Amritsar's case (supra) has expressed a similar view. Learned counsel for the petitioner had conceded his inability to cite any precedent to the contrary, and it is, therefore, plain that the weight of authority is uniformly against the stand taken by the petitioner.

(5) An examination of the matter on principle is however now inevitable, and since the controversy must revolve around the language of the statute, it is necessary to read Rule 3-A :—

> "3-A. Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage."

In construing the provision aforesaid it must necessarily be kept in the forefront that in essence it lays down a rule of procedure. Equally imperative it is to recall the oft repeated dictum that procedure is in the ultimate the handmaid of justice and not its mistress and is meant to advance its cause and not to obstruct the same. A procedural rule, therefore, has to be liberally construed and care must be taken that so strict an interpretation be not placed thereon whereby technicality may tend to triumph over justice. It has to be kept in mind that an overly strict construction of Rule 3-A may result in the stiffling of the material evidence of a party even if for adequate reasons, which may be beyond his control, the party concerned had failed to secure the permission, to step into the witness-box later, at the time of commencement of his evidence. That to my mind cannot be easily ascribed as the intent of the Legislature in enacting the provision. It is worthwhile to recall the picturesque observations of Krishna Iyer, J., speaking for the Court in State of Punjab v. Shamlal Murari (6), that "we must always remember that processual law is not to be a tyrant but a servant, not an obstruction

(4) 1978 (2) R.L.R. 554.

(5) 1978 P.L.R. 412.

(6) 1976 A.I.R. S.C. 1177.

but an aid to justice. It has been wisely observed that procedural prescriptions are the hand-maid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, the procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all, Courts are to do justice, not to wreck this end product on technicalities."

(6) Keeping the aforesaid canon of construction with regard to procedural laws in mind we may now go back to the language of Rule 3-A. A bare reference thereto would make it manifest that the Legislature has undoubtedly laid down the rule that a party appearing as his own witness must so appear before any other witness on his behalf has been examined. However, in equally express terms one exception to the said rule has also been provided by the Legislature itself. This is that with the permission of the Court a party for sufficient cause may be allowed to appear even at a stage subsequent to the examination of one or all of his witnesses. It, therefore deserves highlighting that the rule requiring a party to step into the witness-box first is not an inflexible one and can be relaxed with the permission of the Court. What however, is significant to note herein is that the language of the statute does not in any way prescribe the precise time at which the permission to appear later is to be secured. It does not say that this must necessarily be in the very first instance before any witness has been examined on his behalf. One may, therefore, say that the statute is silent as to the stage at which the permission is to be secured. Nor can it be said that by necessary intendment the Legislature has laid down that the said permission must be sought at the very inception of the evidence and not later. Indeed, when broadly construed, the intention of the Legislature appears to be that the normal and the ordinary rule prescribed now is that the party appearing as his own witness should do so before any one of his witnesses. However, the rule is not an inflexible or a sacrosant one and may be expressly deviated from with the permission of the Court based on adequate reasons. No specific stage being prescribed or fixed by the statute for securing such permission, a party may perhaps as a matter of abundant caution apply at the stage of commencing his evidence and get the necessary permission and equally, if a sufficient ground is made out he may secure the same at a later stage.

(7) Coming now to precedents, in view of the fact that Jagannath Nayak's case (supra) has itself been overruled by a Division Bench of its own Court, it would obviously be wasteful to examine or refute its rationale. It suffices to mention that some reliance was placed on the Legislative history of the provision and in particular the report of the Law Commission for taking that view, which was considered and repelled in M/s. Kwality Restaurant, Amritsar's case (supra) to which a detailed reference can be made on this specific point. Again it would be wasteful to tread the same ground over again and agreeing with the reasoning of the Division Bench in Maguni Dei's case (supra) and the Allahabad view in Mohd. Aqil's case (supra), I would hold that the provisions of Rule 3-A are directory in nature and the Court is not denuded of jurisdiction to grant permission when an application therefor is made for good reasons even at a later stage.

(8) The matter is capable of being viewed from another angle as well. Apart from the issue of the rule being mandatory or directory, it is clear that the command laid therein regarding the party appearing before his other witnesses has been itself provided with an exception where permission to do otherwise can be accorded by the Court for adequate reasons. When the provision itself provides both the mandate and an exception thereto, the one cannot be divested from the other. The significant thing to highlight here is that the true question at issue is not with regard to the ordinary rule that a party shall appear before any witness on his behalf appears, but pertains to the stage at which such permission to appear at a later stage is to be secured. Whilst the ordinary rule with the exception thereto may normally be adhered to, there appears to be nothing inflexible in Rule 3-A with regard to the stage of securing the permission as such. I would, therefore, hold that such permission may also be sought at a later stage and if the Court finds merit in the same it would not be debarred from acceding to such a prayer. Equally it deserves to be recalled that the Legislature has itself prescribed a certain safeguard by laying down the requirement of the recording of reasons for doing so.

(9) Before parting with this judgment, however, a note of caution must be sounded. Holding that the aforesaid rule is directory and the permission may be granted at a later stage, is not to say that the mandate of the Legislature in this context is to be easily

disregarded or lightly deviated from. It is plain that as a normal rule the Legislature requires the testimony of the party to be recorded first and the rationale thereof is not far to seek. Apparently in order to prevent an easy deviation from the rule, it has been laid down that the Court shall record its reasons for doing so. It is to be hoped that the trial Courts, in whom primarily the discretion has been vested, would keep both the letter and the spirit of the rule in mind before according permission thereunder in exceptional circumstances, and not whittle the same down by allowing too easy and indiscriminate deviation therefrom.

(10) Keeping the aforesaid principles in mind, I am unable, on merits, to find anything in the order under revision which can possibly call for interference under section 115 of the Code of Civil Procedure. The revision petition is without merit and is hereby dismissed with costs.

Prem Chand Jain, J.—I agree.

Kulwant Singh Tiwana, J.—I agree.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia C.J., R. N. Mittal and A. S. Bains, JJ.

RAJENDER PARSHAD and others,—*Petitioners.*

versus

STATE OF HARYANA and others,—*Respondents.*

Civil Writ No. 2010 *of* 1974.

March 28, 1979.

Haryana Municipal Common Lands Regulation Act (15 *of* 1974) —*Sections* 2(*g*), 4 *to* 7 *and* 10—*Constitution of India* 1950—*Articles* 19, 31 *and* 31*A* (1) (*a*)—*Act vesting agricultural estates in Municipal Committees without payment of compensation—Whether violates Article* 31—*The Act—Whether a measure of agrarian reform—Protection of Article* 31*A* (1) (*a*)—*Whether* available—*Act* labelled as