

Held, that Rule 1A of Order 16 of the Code of Civil Procedure, 1908 makes a provision to the effect that any party to the suit may, without applying for summons under Rule 1, bring any witness to give evidence or to produce documents. Thus, so far as the question of citing the aforesaid witnesses in the initially filed by the petitioners is concerned, I am of the considered view that this fact alone ought not to have weighed with the learned trial Court to disallow their production as witnesses particularly when they were present in court on the date when the evidence of the petitioners was to be recorded. (Para 3)

Petition under section 115 CPC revision for the order of the Court of Shri K. S. Bhullar, S.J.I.C., Samrala, dated 28th March, 1987 disallowing the examination of R. Krishanan and Sukhdev Chand and further ordering to come up on 23rd April, 1987 for remaining evidence.

H. L. Sibal, Sr. Advocate with S. D. Bansal Advocate, for the Petitioners.

R. S. Mittal Sr. Advocate with P. S. Bajwa Advocate, for the Respondents.

JUDGMENT

D. V. Sehgal, J. (Oral)—

This revision petition is directed against the order dated 28th March, 1987 passed by the learned Sub Judge 1st Class, Samrala. The case was fixed for the remaining evidence of the plaintiff-petitioners. Along with the other witnesses they had brought in Court Shri R. Krishanan, an engineer, and Sukhdev Chand, their Accountant, to appear in the witness box. Both these witnesses were not allowed to be produced,—*vide* the impugned order. The learned trial Court held that Shri R. Krishanan was sought to be produced to give evidence with regard to the survey made by him and the loss which the petitioners allegedly suffered on collapse of their cold storage. It noticed the fact that it was the case of the petitioners in their plaint as also during the course of the evidence that the survey of the loss had been conducted by M/s K. L. Bansal & Company. Mr. K. L. Bansal of the said Company had appeared in the witness box. When during cross-examination it was brought out that he was not a qualified Surveyor, the lacuna is sought to be filled in by producing Mr. R. Krishanan.

(2) As regards Sukhdev Chand, Accountant of the petitioners, the learned trial Court observed that he was neither cited as a witness nor the books of account which he was required to produce in

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Court and from which he was to depose were relied on by the petitioners in the list of reliance filed in the Court. The learned trial Court for its impugned order got support from the provisions of Order VII, rules 14, 15 and 18 of the Code of Civil Procedure (for short 'the Code').

(3) I have heard the learned counsel for the parties. I am of the considered view that the petitioners ought to have been allowed to produce the above said evidence. Order XVI, rule 1, of the Code, *inter alia*, provides that the Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness other than those whose names appear in the list referred to in sub-rule (1) thereof, if such party shows sufficient cause for the omission to mention the name of such witness in the said list. Rule 1-A thereof makes a further provision to the effect that any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents. Thus, so far as the question of citing the aforesaid witnesses in the list initially filed by the petitioners is concerned, I am of the considered view that this fact alone ought not to have weighed with the learned trial Court to disallow their production as witnesses particularly when they were present in Court on the date when the evidence of the petitioners was to be recorded.

(4) No doubt, the petitioners had already examined Shri K. L. Bansal of K. L. Bansal and Company regarding the survey of the loss suffered by them. The learned trial Court has sought support from the provisions of Order VII, rule 14(1) of the Code for holding that since the petitioners had not filed the survey report of Mr. R. Krishanan or the books of account which Sukhdev Chand was to produce, these documents could not be adduced in evidence through these witnesses. The aforesaid rule makes mandatory the production of documents which are the basis of the suit and where the plaintiff sues upon the documents in his possession or power. Its rigour does not apply to the documents which are sought to be adduced as corroborative evidence in support of the claim made in the plaint. Sub-rule (2) *ibid* lays down that where the plaintiff relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint. The list of reliance appended with the plaint has been perused. Item 4 thereof mentions record of loss and damages suffered and expenses incurred relating to plant in question. This certainly embraces in its fold a report regarding survey of the loss suffered. Sukhdev Chand is

the Accountant of the petitioners. He could depose from their record. Reliance on the same is also placed in item No. 6 of the list of reliance of documents adverted to above.

(5) The learned counsel for the respondents vehemently contended that as provided in Order VII, rule 18 of the Code, a document which ought to have been produced in Court by the plaintiff when the plaint was presented, or was to be entered in the list added or annexed to the plaint, but is not produced or entered accordingly, the Court shall not receive such document in evidence on behalf of the petitioners at the hearing of the suit unless it specifically grants leave for the purpose. This rule no doubt makes it imperative for the parties to produce the documents along with the plaint on which the suit is founded and also to enter other documents in a list of reliance to be added or annexed to the plaint as provided by sub-rule (2) of rule 14 *ibid*. As I have already observed the documents sought to be produced through these witnesses are not those on which the suit is founded. Reliance on them has been made as mentioned in the list attached with the plaint.

(6) It is one of the cardinal principles of the rules of natural justice that full opportunity should be afforded to the parties to produce their evidence and state their case before the Court and the Court ought to exercise discretion in favour of production of evidence. No doubt where a party is using dilatory tactics and tries to stall the proceedings by seeking adjournment to produce witnesses whose evidence is not relevant, the Court is well within its power to refuse production of such evidence. But the facts as are found in the present case make it clear that no such default has been committed by the petitioners. Both the witnesses were present on the date when the evidence was to be recorded.

(7) Consequently, I allow this revision petition, and set aside the order dated 28th March, 1987 of the trial Court, but leave the parties to bear their own costs.

(8) The parties through their learned counsel are directed to appear before the learned trial Court on 4th November, 1988 when it shall take further proceedings in accordance with law and allow the production of the aforesaid two witnesses on behalf of the petitioners. It is made clear that the respondents shall have the right to raise objection to the production of any particular document produced through the aforesaid witnesses which objection shall be decided by the trial Court at the stage of arguments in accordance with law.

S.C.K.