

Before Rajendra Nath Mittal, J.

BALWANT SINGH GILL (LT. COL.) and another,—Petitioners

versus

GURDEV SINGH and others,—Respondents.

Civil Revision No. 737 of 1979

January 8, 1980.

Code of Civil Procedure (V of 1908)—Order 12 Rule 4—Words 'the day fixed for hearing'—Meaning of—Application under Rule 4—Whether can be made by a party after the close of its evidence.

Held, that from a reading of rule 4 of order 12 of the Code of Civil Procedure 1908, it is evident that a party can file an application for admission of facts not later than nine days before the date fixed for hearing. The rule provides that in case the other party refuses or neglects to admit those facts within six days after the service of such notice, the costs for proving such facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be. This language is a pointer to the fact that 'the day fixed for hearing' will mean the date fixed for hearing of the party who made the application. The reason for arriving at the conclusion is that in case of refusal or neglect by the other party to admit the fact, the party making an application can lead evidence to prove those facts. In case the application can be filed by a party at any stage of the proceedings, the whole purpose of the rule would be frustrated. The legislature has used the words "at any stage of the proceedings" in Order 12 Rule 3-A. In case the intention of the legislature had been that an application could be filed under rule 4 at any stage, then the same language could have been used. Thus, an application for the admission of facts is not maintainable at the instance of a party after it has closed its evidence.

(Para 4).

Petition under section 44 of Act IX of 1919 read with section 115 C.P.C. for revision of the Order of Shri M. S. Ahluwalia, Sub-Judge 1st Class, Faridkot, dated 8th February, 1979 dismissing application of the plaintiffs.

S. S. Mahajan, Advocate, for the Petitioners.

Vinod Kataria, Advocate, for the respondents.

Balwant Singh Gill (Lt. Col.) and another v. Gurdev Singh and others (R. N. Mittal, J.)

JUDGMENT

R. N. Mittal, J. (Oral)—

(1) This revision petition has been filed by the plaintiffs against the order of the Subordinate Judge, First Class, Faridkot, dated February 8, 1979, disallowing an application under Order 12, Rule 4, Code of Civil Procedure (hereinafter referred to as the Code).

(2) Briefly, the facts are that the plaintiffs instituted a suit for the recovery of Rs. 46,000 against the defendants. The plaintiffs completed their evidence on October 24 and 25, 1978. Thereafter, Gurdev Singh defendant, appeared as his own witness on December 8, 1978 and his statement was concluded on January 16, 1979. On that date, i.e., January 16, 1979, the plaintiffs filed an application under Order 12, Rule 4 of the Code praying that a notice be issued to the defendants to admit certain facts. The application was opposed *inter alia* on the ground that no such application could be filed at that late stage. The learned trial Court dismissed the same. The plaintiffs have come up in revision against the said order.

(3) It is contended by the learned counsel for the petitioners that under Order 12, Rule 4, no period has been prescribed for serving such a notice. He argues that even if the plaintiffs had completed their evidence they had the right to serve a notice under the said rule and the learned trial Court erroneously rejected their application.

(4) I have heard the learned counsel for the parties at a considerable length but am not impressed with the contention. It is not disputed that the plaintiffs completed their evidence on October 24 and 25, 1978 and thereafter the statement of the defendant was recorded on December 8, 1978 and January 16, 1979. From the aforesaid circumstances it is clear that the defendants have started leading evidence in defence. Order 12, Rule 4, reads as follows:—

“4. *Notice to admit facts.*—Any party, may, by notice in writing at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be

paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs;

Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice: Provided also that the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just."

From a reading of the rule, it is evident that a party can file an application for admission of facts not later than nine days before the date fixed for hearing. The question arises, what do the words 'the day fixed for hearing' mean. The rule provides that in case the other party refuses or neglects to admit those facts within six days after the service of such notice, the costs for proving such facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be. This language is a pointer to the fact that 'the day fixed for hearing' will mean the date fixed for hearing of the party who made the application. The reason for arriving at the conclusion is, that in case of refusal or neglect by the other party to admit the facts, the party making the application can lead evidence to prove those facts. In case the application can be filed by a party at any stage of the proceedings, the whole purpose of the rule is frustrated. The legislature has used the words 'at any stage of the proceedings' in Order 12, Rule 3-A. In case the intention of the legislature had been that, an application could be filed under rule 4 at any stage, then it could have used that language. Thus the above interpretation also finds support from Rule 3-A. After taking into consideration the aforesaid circumstances, I am of the opinion that the trial Court was justified in holding that the application in the present case for admission of facts was not maintainable after the plaintiffs had finished their evidence.

(5) For the aforesaid reasons the application fails and the same is dismissed. The costs in the revision petition shall be the costs in the suit. The parties are directed to appear in the trial Court on 8th February, 1980.

N.K.S.