

JEET MOHINDER SINGH
v.
HARMINDER SINGH AND ANR.

A

JULY 26, 2004

[ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

B

Code of Civil Procedure, 1908:

Order XVIII, Rule 17—Application to recall a witness styled as under Order XVI, Rule 3—Maintainability of—Held, though nomenclature of an application is not material, and the substance is to be seen, yet duty is cast on parties to properly frame applications and quote provisions of law applicable with nomenclature in clear and precise manner—Liberty granted to file a fresh application in terms of Order XVIII, Rule 17—Practice and Procedure.

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In an election petition, an application was filed under Order XVI, Rule 3 of the Code of Civil Procedure, 1908 with a prayer to recall a particular witness for the purpose of confronting him with a judgment passed in a different case. The High Court rejected the application holding that a witness could not be confronted with the judgment in which there was reference to a previous statement.

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In the appeal before this court, it was contended for the appellant that though the application was styled as one under Order XVI, Rule 3, but in essence it was a petition under Order XVII, Rule 17 CPC, and, therefore, the prayer should have been accepted.

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Allowing the appeal in part, the Court

HELD : Though nomenclature of an application is really not material and the substance is to be seen, yet it cannot be said that a party shall be permitted to indicate any provision and thereafter contend that the nomenclature should be ignored. Duty is cast on the parties to properly frame their applications and indicate the provisions of law applicable for making the application. There is a purpose in indicating the nomenclature in a clear and precise manner. The care

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A and caution required to be observed while making an application in the highest Court of the State are sadly missing in this case. In view of the accepted position that the application was not filed with care and caution and did not indicate the relevant provisions of law correctly, the appellant is permitted to file a fresh application in terms of Order **B** XVIII Rule 17 of the Code. [139-G-H; 140-A-B, E-F]

The Municipal Corporation of Greater Bombay v. Lala Pancham and Ors., AIR (1965) SC 1008, referred to.

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4437 of 2004.

From the Judgment and Order dated 23.1.2004 of the Punjab and Haryana High Court in CM No. 5-E of 2004 in Election Petition No. 14 of 2002.

D Ranjit Kumar, Raj K. Pandey and Kuldip Singh for the Appellant.

K.G. Bhagat and Debasis Misra for the Respondent.

E The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Leave granted.

F In an Election petition, an application purported to be in terms of Order XVI Rule 3 of the Code of Civil Procedure, 1908 (in short the 'Code') was filed. The prayer was to recall PW-31-Surinder Pal Singh for the purpose of confronting him with the judgment already passed in a different case. The application was rejected by a learned Single Judge of the Punjab and Haryana High Court on the ground that a witness cannot be confronted with the judgment in which there is a reference to the **G** previous statement. It was further held that it would not be in the interest of justice to recall a witness again and again.

H Mr. Ranjit Kumar, learned senior counsel appearing for the appellant submitted that though the application was styled as one under Order XVI Rule 3, but in essence it was petition under Order XVIII Rule 17 of the

Code and, therefore, the prayer should have been accepted. It was also submitted that the view taken by the High Court is not correct in law. A

Mr. K.G. Bhagat, learned counsel appearing for respondent No.1 submitted that when a petition was filed under Order XVI Rule 3 of the Code, it is not open to the appellant to state that the petition was in essence different and, therefore, the High Court rightly rejected it. It was, however, fairly accepted that in a given case the witness can be recalled for the purpose indicated. B

The prayers in the application styled as one under Order XVI Rule 3 of the Code cannot by any stretch of imagination be encompassed by the said provision. Order XVI Rule 3 deals with tender of expenses to witnesses. So far as the Punjab and Haryana High Court is concerned, the rule reads as follows in view of the amendment : C

For Rule 3, substitute —

“3. *Tender of expenses to witness.* — (1) The sum paid into a Court shall except in the case of a Government servant be tendered to the person summoned, at the time of serving the summons if it can be served personally. D

(2) When the person summoned is a Government servant, the sum so paid into Court shall be created to Government; E

Exception — (1) In cases in which Government servants have to give evidence at a Court situate not more than five miles from their headquarters, actual traveling expenses incurred by them may, when the Court considers it necessary, be paid to them. F

Exception — (2) A Government servant, whose salary does not exceed Rs. 10 per mensem, may receive his expenses from the Court.” G

Though the nomenclature of an application is really not material and the substance is to be seen, yet it cannot be said that a party shall be permitted to indicate any provision and thereafter contend that the nomenclature should be ignored. Duty is cast on the parties to properly H

- A frame their applications and indicate the provisions of law applicable for making the application. Nomenclature may not be normally material. But there is a purpose in indicating the nomenclature in a clear and precise manner. Though it is the substance and not the form which is material but as indicated above, that cannot be a reason to quote an inappropriate provision of law and then say "Don't look at the nomenclature". The care and caution which is required to be taken cannot be diluted to absurd limits. The care and caution required to be observed while making an application in the highest Court of the State are sadly missing in this case. Order XVIII Rule 17 deals with recall and examination of a witness and reads as follows:
- C. "The Court may at any stage of a suit recall any witness who has been examined and may subject to the law of evidence for the time being in force put such questions to him as the Court thinks fit."
- D In *The Municipal Corporation of Greater Bombay v. Lala Pancham and Ors.*, AIR (1965) SC 1008 it was observed that it is not open to a Court to compel a party to make a particular kind of pleading or to amend his pleading so also it is beyond its competence to virtually oblige a party to examine any particular witness.
- E In view of the accepted position that the application was not filed with care and caution and did not indicate the relevant provisions of law correctly, we think it would be proper to permit the appellant, if he so chooses, to file a fresh application in terms of Order XVIII Rule 17 of the Code and if any such application is filed, the same shall be considered on its own merits in accordance with law uninfluenced by the rejection of the application which was styled as one under Order XVI Rule 3 of the Code. The appeal is allowed to the extent indicated with no order as to costs.
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- R.P. Appeal allowed.