

in accordance with law and should be heard. The foregoing remarks of course apply only to those cases (a great majority) in which the interests of the appellants are common, and have no application where the interests of any of the appellants conflict with each other.

I accept the recommendation of the learned Sessions Judge, set aside the order of the Additional District Magistrate, dismissing the appeal, and direct him to restore it to his file and dispose of it on the merits.

A. N. C.

Revision accepted.

REVISIONAL CIVIL.

Before Agha Haidar J.

MEHR CHAND (PLAINTIFF) Petitioner

versus

DAYAL CHAND (DEFENDANT) Respondent.

Civil Revision No. 144 of 1936.

Civil Procedure Code, Act V of 1908, Order XVI, rule 1 : Witness applied for at a late stage — whether Court can refuse to issue summons — The word ' may ' in the rule — explained.

Held, that the word ' may ' in Order XVI, rule 1, Civil Procedure Code, means " it shall be lawful."

Held further, that even though an application is made very late, unless it is frivolous and vexatious on the face of it, the Court has no discretion but to summon the witnesses required by a party. The only penalty for making an application at a late stage is that if the summons is not served in time and the witness, therefore, is not able to attend the Court, the case may not be adjourned to another date.

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Kandru Haldar v. Tarapasanna Roy Chowdhuri (1),
and *Munshi v. Mst. Karmon* (2), relied upon.

*Petition under section 25 of Act IX of 1887, for
revision of the decree of Lala Chiranjiv Lal, Judge,
Small Causes Court, at Gujranwala, dated 13th
November, 1935, dismissing the plaintiff's suit.*

NIAMAT RAI, for Petitioner.

BODH RAJ SAWHNEY, for Respondent.

AGHA HAIDAR J.

AGHA HAIDAR J.—This application for revision arises out of a suit instituted in the Court of Small Causes for the recovery of Rs.74. The suit was instituted on the 23rd of November, 1934. The 5th of January, 1935, was fixed for scrutiny. The 19th of January, 1935, was fixed for the hearing of the case and for final disposal. For reasons, into which it is not necessary to enter, the case could not be taken up on two subsequent adjourned dates and on the 27th of April, 1935, fresh notices were issued. The 25th of June, 1935, was fixed for scrutiny. The 11th of July, 1935, was fixed for final disposal and issues were struck. As Ram Lal, one of the witnesses for the plaintiff, was ill the plaintiff made an application that he should be examined on commission. The Court acceded to this request but at the same time made an order that no further opportunity for evidence would be given. The 13th of November, 1935, was the next date fixed for hearing. On the 9th of October, 1935, the plaintiff filed *talbana*, and also made a note on the printed form which reads like an application and is to the effect that since Ram Lal had recovered from his illness he may be summoned to appear in Court. This was followed by a formal application, dated the 16th of October, 1935, in which

(1) 1926 A. I. R. (Cal.) 364.

(2) 1927 A. I. R. (Lah.) 281.

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the plaintiff asked that Ram Lal be summoned to give evidence as he was no longer suffering from illness. On the 17th of October, 1935, the Court passed the order that "service be effected as ordered before or the applicant should bring the witness himself." This order was not passed in the presence of the parties. On the 28th of October, 1935, the plaintiff made another application under Order 26, rule 1, Civil Procedure Code, for the issue of commission to Ram Lal. Notice was served on the opposite party of this application. The learned Judge has rejected this application and dismissed the plaintiff's suit because his witnesses were not ready. The plaintiff has come up to this Court in revision.

Order 16, rule 1, is perfectly clear. It says:

"At any time after the suit is instituted, the parties may obtain, on application to the Court..... summonses to persons whose attendance is required either to give evidence....."

The word "may" here means "it shall be lawful." This provision of the Code has been the subject of consideration in numerous decisions the substance of which appears to be that, unless the application, on the face of it, is frivolous and vexatious, the Court has no discretion except to summon the witnesses. Of course, if an application is made too late and the service on the witness cannot be effected in time, it is within the discretion of the Court to adjourn the date of the hearing or not, but there is no reason whatsoever why the plaintiff should not be given an opportunity, if he is prepared to take the chance of having the presence of the witness secured by serving a notice upon him. If any authority were needed for this proposition it would be found in

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Kandru Haldar v. Taraprasanna Roy Chowdhuri (1), and *Munshi v. Mussamat Karmon* (2). The only penalty for making an application at a late stage is that if the summons is not served in time and the witness therefore is not able to attend the Court, the case may not be adjourned. In my opinion the Court below in exercising its jurisdiction has acted with material irregularity in not giving an opportunity to the plaintiff to summon Ram Lal to appear as a witness on his behalf on the date fixed.

I, therefore, allow this application, set aside the order of the Court below and remand the case to that Court for disposal according to law. The plaintiff shall be at liberty to summon Ram Lal on a date fixed, but no further adjournment shall be allowed and the case shall be taken up and disposed of on the fixed date. Costs here and hereafter shall abide the result.

The parties shall appear before the learned Judge on the 13th of May, 1936, who shall intimate to them the date on which they should produce such evidence as they desire.

P. S.

Revision accepted..

(1) 1926 A. I. R. (Cal.) 364.

(2) 1927 A. I. R. (Lah.) 281.