

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

Civil Revision No.:46 of 2007.

Judgment Reserved on:

Date of decision:29.06.2007

Narotam Singh

....Petitioner

Versus

Ashwani Kumar

....Respondent

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?¹

**For the Petitioner: Mr.G.D. Verma, Senior Advocate with
Mr.Romesh Verma, Advocate.**

For Respondent No.1:Mr.B.N. Mehta, Advocate.

Dev Darshan Sud,J.

The plaintiff, who is the petitioner, is aggrieved by the order of the learned trial Court according permission to the defendants to summon the Tehsildar in evidence. The petitioner has submitted that the name of the Tehsildar was never mentioned in the list of witnesses, but permission was granted without considering the principles of law applicable. Further grievance of the petitioner is that the orders were issued in a routine manner on an application moved by the defendants-respondents behind his back. The matter was adjourned on a number of occasions, but no evidence was examined on behalf of the defendants and by the impugned

¹ *Whether the reporters of Local Papers may be allowed to see the judgement?*

order passed on 28.3.2007 again permission has been accorded to examine the witness aforesaid.

I have heard learned counsel for the parties and have gone through the record.

It is true that the party can examine any person as a witness whose name has not been mentioned in the list of witnesses. Order 16 Rule 1 of the Code of Civil Procedure provides that a list of witnesses who are to appear on behalf of the parties to the litigation shall be filed in the Court. Sub Rule 2 states that a party desirous of obtaining any summons for the attendance of any person in Court shall file an application stating therein the purpose for which the witness is proposed to be summoned. Under Sub Rule 3, discretion is vested in the Court to 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), if such party shows sufficient cause for the omission to mention the name of such witness in the said list as filed in the Court.

True that discretion has been given to the Court to examine a witness whose name has not been mentioned in the list of witnesses. But, this is not meant to ambush the opposite side, who must also have sufficient notice about the factum that a particular person would be examined as a witness and would be deposing on a particular issue. It is also true that Order 16 has been interpreted liberally by the Courts

granting permission to litigants to contest their claim on merits and not to be enmeshed in procedural wrangles. But the conduct of the party must be bonafide and no one should be lethargic and a casual approach to the litigation should not be encouraged. The order of the learned Court shows that the defendant has stated that the other witnesses have *"turned hostile as are helping the plaintiff, therefore, it is in the interest of justice that Sh.Hans Bhatia, Tehsildar is allowed to be examined"*. This is a rather strange request which has been made by the defendants. After all the witnesses who are sought to be examined by the defendants are not planted by the plaintiff. In any event, the application should not be allowed in a casual manner by the learned Court below. At-least an application calling upon the defendants to explain as to why the witness was being summoned should have been called for by the learned Court and disposed of in accordance with the well known principle regulating the exercise of discretion.

This revision petition is accordingly disposed of. The order of the learned Court below is modified to the extent that the respondents-defendants will pay costs of Rs.6600/- to the plaintiff. Of-course, the right of rebuttal in evidence, will be available to the plaintiff.

Parties are directed to appear before the learned trial Court on **31.7.2007**. A further direction is issued to the learned trial Court to dispose of the case with expedition.

In view of the final disposal of the revision petition, all the pending applications, if any, also stand disposed of.

June 29, 2007
(aks)

(Dev Darshan Sud)
Judge.