

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 307 of 2025

Ratna Chatterjee

VS.

Sovan Chatterjee

For the Petitioner : Mr. Ranjan Bachawat, Sr. Adv.
Mr. Suddhasatva Banerjee
Ms. Koel Mukherjee
Mr. Sourajit Dasgupta
Mr. Anurag Sardar
Mr. Mahfuz Murshed
..... advocates

For the Opposite Party : Mr. Kalyan Banerjee, Sr. Adv.
Mr. Joydip Kar, Sr. Adv.
Mrs. P. Bandopadhyay
Mr. Sumanta Biswas
Mr. N. Banerjee
Mr. Bikash Shaw
..... advocates

Reserved on : 21.02.2025

Judgment on : 28.02.2025

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the wife and is directed against an order being No. 204 dated January 10, 2025 passed by the learned Additional District Judge, 6th Court at Alipore, in Matrimonial Suit No. 103 of 2017.
2. By the order impugned, the prayer of the petitioner for fixing date for examination of remaining witnesses was not allowed; the evidence of the wife/ petitioner herein was closed and dates were fixed for argument.
3. Opposite party laid the suit for dissolution of marriage. Petitioner entered appearance in the suit after service of summons and filed the written statement along with counter claim praying for a decree of restitution for conjugal rights. After completion of the evidence of the plaintiffs witnesses

(for short “PW”), the petitioner and her son deposed as Dependent Witness (for short “DW”) 1 and DW2. Thereafter, the petitioner filed a list of witness on 06.12.2024 containing seven names. Only two out of seven persons named in the said list of witness were allowed to depose as DW3 and DW4. Prayer of the petitioner for fixing date for evidence was not allowed by the impugned order.

4. Being aggrieved, wife approached this Court.
5. Mr. Bachawat, learned Senior Advocate appearing in support of the civil revision application contended that the remaining 5 witnesses who have been named in the list of witnesses but have not been allowed to depose on behalf of the wife are important witnesses and their evidence would be relevant for the purpose of effective adjudication of the suit and the counter claim. He submitted that a party cannot be shut out from giving evidence and that is exactly what has been done by the learned trial judge. He attacked the findings arrived at by the learned trial judge by contending that it is for a party to a proceeding to prove his case by adducing evidence through witnesses or documents and it is not for the Court to decide as to who are the most relevant witnesses.
6. He further contended that the petitioner did not seek the assistance of the Court for procuring the attendance of such witnesses and a party to a proceeding has a right to bring any witness to give evidence or to produce documents in view of Rule 1A of Order XVI of the Code of Civil Procedure. He submitted that Order XVI Rule 1 and Order XVI Rule 1A operates in different fields. According to Mr. Bachawat, Order XVI Rule 1 comes into operation only when a party seeks the assistance of the Court for procuring the attendance of witnesses. In support of such contention, he placed reliance upon a decision of the Hon’ble Supreme Court in the case of **Mange Ram vs. Brij Mohan and others** reported at **(1983) 4 SCC 36**. He contended that the order impugned is a non-speaking one as there is no finding as to why the remaining witnesses are not relevant. By drawing the attention of the Court to orders passed by a co-ordinate bench in an earlier civil revision application, Mr. Bachawat contended that it is the opposite party and not the petitioner who is responsible for delaying the proceeding.
7. Mr. Bandyopadhyay, learned Senior Advocate for the Opposite Party seriously disputed the contentions of Mr. Bachawat. He contended that a time limit has been prescribed under Order XVI Rule 1 for filing the list of witnesses. By placing some of the orders passed in the Matrimonial Suit, he contended that repeated opportunities were given to the petitioner to file the list of witnesses but the petitioner chose not to comply with such directions.

However, after a long delay, the list of witness was filed only on 06.12.2024. He submitted that Rule 1A of Order XVI does not give right to a party to the suit to bring witness at any point of time. He contended that even if for the sake of argument it is accepted that Rule 1A empowers a party to the suit to give evidence, the said provision cannot come to the aid of the petitioner as she did not produce the witness on the date fixed. He contended that the learned Trial Judge took into consideration the names mentioned in the list of witnesses and after applying its mind allowed two out of seven persons to depose as DWs. He further contended that since the petitioner has advanced his arguments in the suit on several dates, this Court should not interfere with the order impugned.

8. Mr. Kar, learned Senior Advocate supplemented the argument of Mr. Bandyopadhyay by referring to some of the provisions of the Indian Evidence Act. By referring to Section 134 of the India Evidence Act, Mr. Kar contended that no particular number of witnesses is necessary for the proof of any fact. He placed reliance upon Section 136 of the Evidence Act in support of his contention that the Judge has to decide as to the admissibility of evidence and shall admit the evidence only if the same is relevant. He concluded by submitting that the learned Trial Judge was right in deciding as to who are the most relevant witnesses.
9. Mr. Kar placed reliance upon a decision of the Hon'ble Supreme Court in the case of **R. Shaji vs. State of Kerala** reported at **(2013) 14 SCC 266** in support of his contention that it is not the number of witnesses but the quality of their evidence which is important.
10. Mr. Bandyopadhyay distinguished the decision in the case of **Mange Ram** (supra) by submitting that the said decision cannot be applied to the case on hand as the petitioner failed to keep her witnesses present on the date fixed for recording evidence.
11. In reply, Mr. Bachawat, learned Senior Advocate contended that since the date was fixed for evidence of DW4, the remaining witnesses were not present on that date. He contended that Section 136 of the Evidence Act deals with admissibility of evidence and that only the evidence that is relevant shall be admitted and the same does not empower the Judge to decide as to whether a witness is relevant or not.
12. Heard the learned advocates for the parties and perused the materials placed.
13. The issue that falls for consideration is whether the learned Trial Judge was right in not allowing the remaining witnesses to depose as DWs.

14. The learned Senior Counsels of the respective sides have made elaborate arguments on the scope of Order XVI Rules 1 and 1A of the Code of Civil Procedure and for such purpose the aforesaid provisions are extracted hereinafter.

“Order XVI

1. List of witnesses and summons to witnesses.—(1) *On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.*

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

(3) 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), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court in this behalf within five days of presenting the list of witnesses under sub-rule (1)].

1A. Production of witnesses without summons.— *Subject to the provisions of sub-rule (3) of Rule 1, any party to the suit may, without applying for summons under Rule 1, bring any witness to give evidence or to produce documents.”*

15. Order XVI Rule 1(1) provides that the parties shall present in Court a list of witnesses proposed to be called by them to give evidence or to produce documents within the specified time limit and obtain summons to such persons for their attendance in Court.
16. Sub-rule 2 of Rule 1 Order XVI states that a party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating the purpose for which the witnesses is proposed to be summoned.
17. Sub-rule 3 of Rule 1 of Order XVI gives discretion to the Court to permit a party to call a witness by summoning him through court or otherwise even if his name does not appear in the list referred to in sub-rule 1.

18. Rule 1A of Order XVI deals with production of witnesses without summons. Rule 1A enables any party to the suit to bring any witness to give evidence or to produce documents without applying for summons.
19. Upon a conjoint reading of Order XVI Rules 1 and 1A, this Court is of the considered view that a party can bring witness to give evidence or to produce document without recourse to the process of Court under Rule 1A but if the attendance of the witness is to be procured through the assistance of Court, a party to the suit has to obtain witnesses summons as provided under Order XVI Rule 1(1). In case the name of the witness is not mentioned in the list of witnesses, the procedure laid down under sub-rule 3 of Rule 1 of Order XVI is to be followed. Such party has to show sufficient cause for the omission to mention the name of such witness in the list and the Court may permit such party to call whether by summoning through Court or otherwise any witness whose name does not appear in the list. However, the Court has to record reasons in that regard.
20. Sub-rule 1A of Order XVI starts with the expression "Subject to the provisions of sub-rule 3 of rule 1". The issue as to how far sub-rule (3) would carve out an exception to Rule 1A fell for consideration in **Mange Ram** (supra) wherein it was held that sub-rule (3) of Rule 1 and Rule 1A operate in two different areas and cater to two different situations. The Hon'ble Supreme Court held thus-

"10. It was, however, contended that Rule 1-A is subject to sub-rule (3) of Rule 1 and therefore, the court must ascertain how far sub-rule (3) would carve out an exception to the enabling provision contained in Rule 1-A. There is no inner contradiction between sub-rule (1) of Rule 1 and Rule 1-A of Order XVI. Sub-rule (3) of Rule 1 of Order 16 confers a wider jurisdiction on the court to cater to a situation where the party has failed to name the witness in the list and yet the party is unable to produce him or her on his own under Rule 1-A and in such a situation the party of necessity has to seek the assistance of the court under sub-rule (3) to procure the presence of the witness and the court may if it is satisfied that the party has sufficient cause for the omission to mention the name of such witness in the list filed under sub-rule (1) of Rule 1, still extend its assistance for procuring the presence of such a witness by issuing a summons through the court or otherwise which ordinarily the court would not extend for procuring the attendance of a witness whose name is not shown in the list. Therefore, sub-rule (3) of Rule 1 and Rule 1-A operate in two different areas and cater to two different situations."

21. The Hon'ble Supreme Court further held that if on the date fixed for recording the evidence, the party is able to keep his witnesses present despite the fact that the names of the witnesses are not shown in the list

filed under sub-rule (1) of Rule 1, the party would be entitled to examine those witnesses and to produce documents through the witnesses who are called to produce documents under Rule 1A.

22. The object behind amendment of Order 16 Rule 1 and addition of Rule 1A fell for consideration before the Hon'ble Supreme Court in **Lalitha J. Rai vs. Aithappa Raj** reported at **(1995) 4 SCC 244**. It was held therein that if a party fails to obtain summonses through Court for attendance of witnesses they are at liberty to have the witnesses brought without the assistance of the Court. The Hon'ble Supreme Court held thus-

“3. Order 16 Rules 1 and 1-A adumbrate that the witnesses at the trial court are to be produced for examination by the parties by their filing the list, and omission thereon prohibits them to avail the assistance of the court to secure their attendance to give evidence or to produce documents on their behalf. It is true that the legislature amended Order 16 Rule 1 and added Rule 1-A to see that the undue delay should not be caused in the trial of the suit by filing the list of witnesses or the documents at a belated stage. Thereby, it envisages that on or before the date fixed by the court for settlement of issues and not later than 15 days after the date on which issues were settled, the parties are to file the list of such witnesses whom they propose to call either to give evidence or to produce documents and they are required to obtain summonses to such witnesses for their attendance in the court. On their failure to do the same, Rule 1-A says that they may without assistance of the court bring witnesses to give evidence or to produce documents. In other words, if they fail to obtain the summonses through court for attendance of witnesses they are at liberty to have the witnesses brought without the assistance of the court.”

23. By applying the ratio laid down by the Hon'ble Supreme Court in **Mange Ram** (supra) and **Lalitha J. Rai** (supra), this Court holds that a party to the suit would be entitled to examine the witnesses and to produce documents through those witnesses under Rule 1A without the assistance of Court, even if the names of such witnesses are not shown in the list of witnesses.
24. Now turning back to the facts of the case on hand, this Court finds that the instant Matrimonial Suit was filed by the Opposite Party herein on 13.11.2017 and the evidence on behalf of the husband was closed on 08.02.2023. The wife/petitioner herein deposed as DW-1 and her son deposed as DW-2. Father and brother of the wife deposed as DW-3 and DW-4 respectively.
25. Record reveals that the wife/petitioner herein filed one petition dated 06.09.2024 stating that about 18-20 witnesses will adduce evidence for the wife. The said petition was rejected by the learned trial judge by an order

dated 06.09.2024. Petitioner herein took out an application under Section 151 of the Code of Civil Procedure praying for recalling the order dated 06.09.2024.

26. Para 7 of the said application would be relevant for deciding the instant civil revision application, for which the same is extracted hereinafter.

“7. That moreover if the Learned Court wants, then the defendant can adduce the evidence of one more person amongst her list of witnesses being her brother namely Subhasish Das on the next given date as your Lordship may fix.”

27. It appears that the petitioner prayed for an opportunity to call her brother on the next date, if the learned Court wants.
28. Therefore, it is evident that the petitioner at the relevant point of time left it to the discretion of the learned trial judge to allow her brother to depose as DW.
29. The application under Section 151 praying for recalling the order dated 06.09.2024 was rejected by order being no. 199 dated 22.11.2024. However, after taking into consideration all aspects, the wife was given one more opportunity as a last chance to file the list of witnesses, including their names and addresses, if she desires to adduce any further evidence, obviously keeping in mind their relevance as to the matter in hand by 06.12.2024 as a last chance.
30. Petitioner filed the list of witnesses on 06.12.2024. In the said list, petitioner named 7 witnesses.
31. The learned Trial Judge recorded a factual finding that out of 7 witnesses the father and brother of the wife intended to depose in the case. Mr. Bachawat, learned Senior Counsel, however, did not controvert such factual finding in course of hearing of this civil revision application.
32. In the backdrop of such factual finding the learned Trial Judge held that the father of the petitioner will depose as DW3 on the next date and thereafter on completion of his evidence, the brother of the petitioner will tender his evidence as DW4 on further date to be fixed by the Court.
33. The father of the petitioner deposed as DW3 and the brother of the petitioner deposed as DW4 and after DW4 was cross-examined in full and discharged on 10.01.2025, wife prayed for fixing date for examination of the remaining witnesses which was not allowed by the impugned order.

34. Mr. Bachawat would contend that a party to the suit has a right to select his/her witnesses and produce those witnesses before the Court and the Court cannot refuse to examine witnesses tendered by a party.
35. The question would be as to whether the Court would be a silent spectator and is duty bound to allow examination of a large number of witnesses.
36. Section 134 of the Evidence Act mandates that no particular number of witnesses shall in any case, be required for the proof of any fact. It is well settled that evidence is to be weighted and not counted and the testimony of a solitary witness, if believed, may be sufficient to establish any fact. Court is only concerned with the quality and not the quantity of evidence.
37. The Hon'ble Supreme Court in **R. Shaji** (supra) held thus-

“39. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses, but the quality of their evidence which is important, as there is no requirement in the law of evidence stating that a particular number of witnesses must be examined in order to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise. The legal system has laid emphasis on the value provided by each witness, as opposed to the multiplicity or plurality of witnesses. It is thus the quality and not quantity, which determines the adequacy of evidence, as has been provided by Section 134 of the Evidence Act. Where the law requires the examination of at least one attesting witness, it has been held that the number of witnesses produced over and above this does not carry any weight. [Vide Vadivelu Thevar v. State of Madras [AIR 1957 SC 614 : 1957 Cri LJ 1000] , Jagdish Prasad v. State of M.P. [1995 SCC (Cri) 160 : AIR 1994 SC 1251] , Sunil Kumar v. State (Govt. of NCT of Delhi) [(2003) 11 SCC 367 : 2004 SCC (Cri) 1055 : AIR 2004 SC 552] , Namdeo v. State of Maharashtra [(2007) 14 SCC 150 : (2009) 1 SCC (Cri) 773 : AIR 2007 SC Supp 100] , Kunju v. State of T.N. [(2008) 2 SCC 151 : (2008) 1 SCC (Cri) 331 : AIR 2008 SC 1381] , Bipin Kumar Mondal v. State of W.B. [(2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150 : AIR 2010 SC 3638] , Mahesh v. State of M.P. [(2011) 9 SCC 626 : (2011) 3 SCC (Cri) 783] and Kishan Chand v. State of Haryana [(2013) 2 SCC 502 : (2013) 2 SCC (Cri) 807 : JT (2013) 1 SC 222]”

38. Mr. Kar would contend that in view of Section 136 of the Evidence Act, the Judge can decide as to whether a witness is a relevant witness or not.
39. Section 136 of the Evidence Act states that when either party proposes to give evidence of any fact, the Judge may as to the party proposing to give the evidence in what manner the alleged fact, if proved would be relevant and

the Judge shall admit the evidence if he thinks that the fact, is proved, would be relevant and not otherwise.

40. The Judge is, therefore, empowered to allow only such evidence to be given which in his opinion is relevant and admissible. As rightly argued by Mr. Bachawat, what evidence will or will not be allowed is to be determined in accordance with Section 136 if and when evidence is offered and not prior thereto.
41. In the case on hand, it is not in dispute that the petitioner, her son, father and brother have all deposed. As observed hereinbefore, the petitioner while praying for recalling the order dated 06.09.2024 only prayed for allowing her brother to depose. However taking advantage of the opportunity given to the petitioner to file the list of witness as a last chance on 06.12.2024, the petitioner gave the names of 7 witness including her father and brother. Though a party to the suit may have a right to select his/her witnesses, yet if it appears to the Court that the object of bringing a large number of witnesses is to impede the adjudication of the case, Court can disallow such witnesses to be examined. The father and the brother of the petitioner amongst the 7 witnesses named in the list of witnesses have already been examined.
42. The learned Judge who is in seisin over the Matrimonial Suit can only decide as to whether the petitioner is trying to impede the adjudication of the case. At this stage it would be apt to point out that the learned trial judge has specifically recorded in the impugned order that the very idea of introducing seven witnesses even after completion of DW1 and DW2 by itself indicates the *mala fide* action of the wife with an intention of misusing the process of law to delay the proceedings.
43. That apart the wife accepted the order dated 06.12.2024 by virtue of which the learned trial judge after noting that in the list of witnesses there are 7 witnesses allowed only the father and brother of the petitioner to depose as DW3 and DW4 respectively.
44. It also does not appear from the impugned order that the petitioner herein pointed out the relevance of the remaining witnesses when the prayer for fixing a date for remaining witness was made though it was specifically indicated in the order dated 22.11.2024 that the names of the witnesses should be given keeping in mind their relevance as to the matter in hand. The order dated 22.11.2024 has also attained finality.

45. To the mind of this Court the learned trial judge after applying his mind to the witnesses named in the list allowed only two out of seven witnesses to depose.
46. For all the reasons as aforesaid this Court holds that the learned trial judge was right in not allowing the remaining witnesses to depose as DWs. Thus the issue is answered in the affirmative and against the petitioner.
47. This Court, therefore, is not inclined to interfere with the impugned order. Accordingly, C.O. No. 307 of 2025 stands dismissed without any order as to costs. The learned trial judge is requested to dispose of the Matrimonial Suit as expeditiously as possible without granting any unnecessary adjournments to either of the parties. There shall be, however, no order as to costs.
48. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)

Later:

Date: 28.02.2025

After this judgment is pronounced Mr. Bachawat, learned Senior Advocate prays for stay of operation of this order.

Mr. Kar, learned Senior Advocate vehemently opposes the prayer for stay. He submits that the suit has been fixed for arguments and arguments in the suit has already been advanced on 3 days.

The prayer for stay is considered and rejected.

(HIRANMAY BHATTACHARYYA, J.)