

16.06.2025
Item No.9
Ct. No. 30
Aloke

WPA 12590 of 2025

Ludlow Jute & Specialities Ltd.

Vs.

Ram Kumar Bhuiyan & Anr.

Mr. Soumya Majumder, Id. Sr. Adv.

Mr. S.K. Singh

Mr. S.K. Karmakar

Mr. R.K. Dubey

... for the petitioner

Mr. Swapan Kr. Datta, Id. Sr. Adv.

Mr. Dipankar Das Gupta

... for the State

1. Affidavit-of-service filed be kept with the record.
2. The present writ application has been preferred against an award dated 17.12.2024 passed by the learned Second Industrial Tribunal, West Bengal, Kolkata, in Case No. VIII-44/2013 and published on 08.01.2025.
3. Learned senior counsel appearing for the petitioner has brought the notice of this Court to internal page 4 of the award wherein the presiding officer of the Tribunal held as follows :

*“The provisions of Order 18 Rule 4 of the Code of Civil Procedure, 1908 has come into force **w.e.f. 01.07.2002** and it is concerned with evidences of the witnesses of both sides in chief only by affidavit and it is not concerned with the proof of documents in chief and cross-examination of the same witness by the other side and **if a witness does not submit his evidences in chief by affidavit, his evidences in chief cannot be considered legally as per Order 18***

Rule 4 of the Code of Civil Procedure, 1908 but if he proves any document in his examination in chief, that will be considered legally and his cross-examination will also be considered legally.”

4. It is submitted that as the evidence adduced by the petitioner on dock before the Tribunal was not considered and rejected by the Tribunal as the same was not under Order 18 Rule 4 CPC, the petitioner has suffered injustice and thus as such the award challenged is not in accordance with law and thus liable to be set aside.

5 In **Salem Advocate Bar Association, Tamil vs. Union of India dated 25th October, 2002** wherein the Court held as follows :-

“17. In Order 18, Rule 4 has substituted and sub-rule (1) provides that in every case examination-in-chief of the witnesses shall be on affidavits and copies thereof shall be supplied to the opposite parties by the part who calls them for evidence. It was contended by Mr. Vaidyanathan that it may not be possible for the party calling the witness to compel that witness to file an affidavit. It often happens that the witness may not be under the control of the party who wants to rely upon his evidence and that witness may have to be summoned through court. Order 16 Rule 1 provides for list of witnesses being filed and summons being issued to them for being present in court for recording their evidence. Rule 1A, on the other hand, refers to production of witnesses without summons where any

party to the suit may bring any witness to give any evidence or to produce documents. Reading the provisions of Order 16 and Order 18 together, it appears to us that Order 16 Rule 1A, i.e. where any party to a suit, without applying for summoning under Rule 1 brings any witness to give evidence or produce any document. **In such a case, examination-in-chief is not to be recorded in court but shall be in the form of an affidavit.**

18. In cases where the summons have to be issued under Order 16 Rule 1, the stringent provision of Order 18 Rule 4 may not apply. When summons are issued, the court can give an option to the witness summoned either to file an affidavit by way of examination-in-chief or to be present in court for the examination. In appropriate cases, the court can direct the summoned witness to file an affidavit by way of examination-in-chief. In other words, with regard to the summoned witness the principle incorporated in Order 18 Rule 4 can be waived. Whether a witness shall be directed to file affidavit or be required to be present in court for recording of his evidence is a matter to be decided by the court in its discretion having regard to the facts of each case.

19. Order 18 Rule 4(2) give the court the power to decide as to whether evidence of a witness shall be taken by the court or by the Commissioner. An apprehension was raised to the effect that the court has no discretion and once it decides that the evidence will be

recorded by the Commissioner then evidence of other witnesses cannot be recorded in court. We do not think that is the correct **interpretation of sub-rule 4(2). Under the said sub-rule, the court has the power to direct either all the evidence being recorded in court or all the evidence being recorded by the Commissioner or the evidence being recorded partly by the Commissioner and partly by the court.** For example, if the plaintiff wants to examine 10 witnesses, then the court may direct that in respect of five witnesses evidence will be recorded by the Commissioner while in the case of other five witnesses evidence will be recorded in court. In this connection, we may refer to Order 18 Rule 4(3), which provides that the evidence may be recorded either in writing or mechanically in the presence of the Judge or the Commissioner. The use of the word ‘mechanically’ indicates that the evidence can be recorded even with the help of the electronic media, audio or audio-visual, and in fact whenever the evidence is recorded by the Commissioner it will be advisable that there should be simultaneously at least an audio recording of the statement of the witnesses so as to obviate any controversy at a later stage.”

6. In the present case, the tribunal has noted that opposite party petitioner did not file affidavit-in-chief as per Order 18 Rule 4 CPC **but deposed in this case.**

7. The deposition was permitted by the then Presiding Officer, who recorded the evidence on dock without insisting on examination-in-chief on affidavit.

8. It is the Court, which permitted the same and is with the record.

9. Admittedly the examination in chief in the case was recorded on dock, by the predecessor-in-office of the present Presiding Officer. The learned Judge rejected the said evidence as it was not adduced as per the provisions of Order 18 Rule 4 CPC.

10. When the Code grants the discretion to the Court while recording evidence in respect of summoned witnesses, the same is permissible in some rare cases in the interest of justice, where such irregularity is seen.

11. This is an irregularity and not an illegality, but Courts should act as per the relevant provisions of law in normal circumstances.

12. The provisions of Order 18 Rule 4 CPC was incorporated to expedite proceedings in civil cases and thus evidence on dock of the parties is discouraged. But unless it is affirmed on dock the same is not admissible.

13. In exceptional cases, non-consideration of such evidence is against the principle of natural justice.

14. In view of the said facts, the award under challenge dated 17.12.2024 passed by the 2nd Industrial Tribunal, Calcutta being not in accordance with law is set aside.

15. The writ application is disposed of by setting aside the award dated 17.12.2024 passed by the 2nd Industrial Tribunal, Calcutta in case No. VIII-44 of 2013, with the direction that the Tribunal shall consider and decide the issue afresh considering the evidence on record including the evidence of the petitioners herein which was recorded on dock, within a period of 30 days from the date of communication of this order and pass a reasoned order/award afresh.

16. With these observations, the writ petition stands disposed of.

17. There will be no order as to costs.

18. Urgent Photostat certified copy of this order be given to all the parties upon usual undertakings.

(Shampa Dutt (Paul), J.)