

ह तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज Shyam Sunder Vs. Beejraj Revision No.4739/2012/TA/Ajmer	नम्बर व तारीख अहकाम जो इस हुक्म की तामील में जारी हुए
13.7.2012	<p style="text-align: center;"><u>S.B.</u> Shri Pramil Kumar Mathur, Member</p> <p><u>Present:</u> Shri Abhishek Sharma: counsel for the petitioner. Shri Suvalal Mahawar: counsel for non-petitioners no.3 to 5. - - -</p> <p>This revision petition calls in question an order dated 23.5.2012 passed by the learned Sub Divisional Officer, Beawar whereby he has closed the petitioner's right of cross-examination.</p> <p>Briefly stated, non-petitioner no.1 filed a revenue suit against the petitioner & remaining non-petitioners for declaration & correction of entries for the land bearing khasra no.327 & 345 situated at Village Govindpur Tehsil Beawar District Ajmer. During the course of trial, witness Ramchandra had filed his affidavit for examining him as witness. By the impugned order dated 23.5.2012, learned trial court has ordered to close the petitioner's right to cross-examine the witness Ramchandra, which is under challenge.</p> <p>I have heard the arguments of learned counsels for the parties at the admission stage and perused the record.</p> <p>Appearing for the petitioner, Mr. Abhishek Sharma strenuously contended that closure of evidence by the trial court is unjustified causing great failure of justice and requires interference by this court. He argued that witness Ramchandra had filed his affidavit on 12.4.2012, thereafter on several occasions, learned presiding officer was busy in administrative work and after that an application under Order 6 Rule 16 of the Code of Civil Procedure has been filed which was decided on 10.5.2012. Immediately after that, learned trial court has proceeded to close the evidence,</p>	

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	<p>while as per the settled proposition, reasonable opportunity should have been provided for cross-examining the witness. Therefore, the revision be accepted.</p> <p>Per contra, learned counsel for non-petitioners no.3 to 5 has submitted that trial court has afforded sufficient opportunities to the petitioner, but petitioner has failed to avail those opportunities. Therefore, the trial court did not commit any irregularity or illegality in passing the impugned order.</p> <p>I have given thoughtful consideration to the rival contentions and scanned the matter carefully.</p> <p>There is a considerable merit in the submission made by the learned counsel for the petitioner. Right of cross-examination is a statutory right available to the party. If this statutory right will not be allowed to avail reasonably, then certainly it will cause serious effect on the petitioner's case. From the bare perusal of the certified copies of the trial court's order sheet, I cannot lose sight of the facts that on several occasions, presiding officer was busy in administrative work and in between an application under Order 6 Rule 16 of the CPC has been filed. Therefore, due to the reasons beyond control of the petitioner, proceedings could not be materialised which denotes that the witness could not be examined not because of any deliberate, neglect or inaction on the part of the petitioner, but on account of the reasons which are beyond the control of the petitioner. In the circumstances, interest of justice would substantially be served if a final opportunity is given to the petitioner to cross-examine the witness Ramchandra.</p>	

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	<p>In the result, this revision is allowed at the admission stage itself, the impugned order passed on 23.5.2012 is set aside and it is directed that the petitioner shall be permitted to cross-examine the witness Ramchandra on the next due date and if the petitioner fails to avail the right of cross-examination on the next due date, then his right of cross-examination shall be deemed to be closed ipso facto.</p> <p>Pronounced.</p> <p>(Pramil Kumar Mathur) Member</p>	