According to the said provisions, the tenant could not sue his landlords for the purposes of compelling them to inter-plead with any persons other than persons making claim through such principals or landlords. Admittedly, in the present case defendants Nos. 4 to 19 are not claiming through the landlords defendants Nos. 1 to 3. They claim themselves to be the owners of the shop in dispute and have denied the rights of defendants Nos. 1 to 3. In these circumstances, the said provisions of Order 35 rule 5, C.P.C., were clearly attracted and the tenants here could not maintain the suit against the landlords i.e., defendants Nos. 1 to 3 compelling them to interplead with defendants Nos. 4 to 19. In *Yeshwant Bhikaji's case* (supra), it was held that "a tenant is not permitted to deny his lessor's title at the commencement of the tenancy, and therefore, in order that in inter-pleader suit may lie, the claim of the party other than the landlord must be consistent with the title of the landlord at the commencement of the tenancy in question."

(6) In the present case, defendants Nos. 4 to 19 are claiming independent rights of ownership and, therefore, the said dispute between the parties *inter se* could not be decided in the present interpleader suit. In these circumstances, the view taken by the trial Court was wrong and illegal. No such interpleader suit was maintainable on behalf of the tenant. Defendants Nos. 4 to 19 may seek their remedy if any, in accordance with law. The tenant is liable to pay rent to his landlords defendants Nos. 2 and 3. Consequently, this petition succeeds, the impugned order is set aside and the preliminary issue is decided in favour of the defendants and against the plaintiff. The parties are directed to appear in the trial Court on 15th August, 1989.

P.C.G.

Before I. S. Tiwana, J.

RON SON EXPORT HOUSE PRIVATE LTD. AND ANOTHER.—*Appellants.*

versus

NEW BANK OF INDIA LTD.,—*Respondents.*

Regular First Appeal No. 573 *of* 1981

March 8, 1989.

Code of Civil Procedure, 1908—*Order* 10, *Rl.* 4(2)—*Court fixing date for admission or denial of documents—Defendant not present on said date—Defence counsel present and such counsel not examined—Striking of defence—Justification of such order.*

Held, that it is true that the intention of the rule is to enable the Court not only to get obscure points cleared by obtaining the information from either of the parties but also, if possible, to get admissions so as to narrow down the issues raised in the pleadings but the rule being a penal provision, its terms have essentially to be applied strictly before the Court can justifiably pass an order striking off the defence of a party. It is abundantly clear from the phraseology of the rule itself that before the Court requires the personal appearance of a party, it should essentially examine the parties' counsel and if it still feels that further elucidation of any point or question is necessary it may call the party in person. In the instant case till their counsel in the trial Court had either expressed his unwillingness or refusal to answer the questions which the Court wanted to elicit, there was not justification either to summon the defendants for the said purpose or to strike off their defence. (Para 4)

Regular First Appeal from the order of the Court of Shri N. D. Bhatara, P.C.S. Addl. Senior Subordinate Judge, Ludhiana, dated 17th September, 1980, passing a decree for the recovery of Rs. 8,32,260.03 P. with costs in favour of the plaintiff and against the defendants. The plaintiff is further entitled to the future interest at the rate of 18 per cent per annum from the date of the suit till its realisation as it is commercial transaction.

Claim: *Suit for recovery of Rs. 8,32,260.03 P. (Rs. Eight Lac thirty two thousand two hundred sixty and paise three).*

Claim in Appeal: *For reversal of the order of the Lower Court.*

Arun Jain, Advocate, *for the appellants.*

Raj Kumar, Aggarwal, Advocate, *for the respondent.*

JUDGEMENT

I. S. Tiwana, J.

(1) A decree for Rs. 8,32,260.03 paise with costs has been passed by the Additional Senior Sub Judge, Ludhiana, against the appellants by striking off their defence under Order 10, Rule 4(2), C.P.C. The respondent bank has further been made entitled to recover this amount with interest at the rate of 18 per cent from the date of the suit, i.e., March 14, 1980 to the date of its realisation. The suit was filed with the allegations that the bank provided the following credit facilities to the appellants:—

(i) Pre-shipment advances;

(ii) Packing credit (Shipping loan);

(iii) Foreign Bills, Purchases, and

(iv) Post-shipment loan;

and the above noted amount was due to it on that account.

(2) In order to appreciate the respective contentions of the parties now it is just necessary to notice the interim orders that led to the striking off the defence of the appellants and the passing of the decree in question. Their verbatim reproduction is as follows:—

"(16.7.80)

Present: Counsel for the parties.

Costs paid, written statement has been filed. To come up for replication and issues, admission and denial of documents and the statement of parties before issues. To come up on 30th July, 1980.

(30.7.80)

Present: Counsel for the parties.

Replication has been filed. For defendants' admission and denial of documents, counsel for the defendant states that he has not been able to inform his client of the adjournment to have been granted. To come up on 8th August, 1980, for statements of parties on issues of admission and denial of documents.

(8.8.1980)

Present: Counsel for the parties.

It is stated by counsel for both the parties that a talk for compromise is in progress and the date has been prayed for. To come up on 28th August, 1980 either for compromise or statements of parties before issues and admission and denial of documents, as already ordered.

(28.8.80)

Present: Counsel for the parties.

Compromise not effected. None for the defendant has been produced for recording their statements. Last opportunity is granted to the defendants to produce the defendants for recording their statements and for admission and denial of documents on 17th September, 1980."

Since the defendants failed to appear in Court on the date fixed, i.e., on September 17, 1980, the impugned decree was passed.

(3) Mr. Jain, appearing for the appellants streneously contends that that order under this Rule could only be passed if the Court was of the opinion that there was a *material question/questions* relating to the suit which required to be answered by the defendants (now appellants) and their counsel was either not able to answer the same or had refused to do so. In other words, no such order for the appearance of the defendants could be passed if their counsel was able to or prepared to answer the questions which the Court had in mind. He also maintains that opinion of the Court as reflected in the order should be specific and sufficiently explicit to indicate as to what the defendants or their counsel is required to answer on the date fixed and the mere direction that the defendants should appear on the date fixed to admit or deny the documents placed on record is not sufficient and is no compliance of the pre-requisites of an order passed under sub-rule (2). As Against this the stand of Mr. Aggarwal, learned counsel for the respondent bank is that the Court is not under an obligation to record the specific questions in its order which are required to be answered by the counsel or the party concerned. He further emphasises that in the case in hand the orders reproduced above clearly indicate what was required to be put to the defendants and that their counsel was not in a position to answer those questions. According to Mr. Aggarwal, had it been otherwise the appellants' counsel in the trial court would have straightaway said that he was willing and ready to answer the questions the Court had in mind. Since the counsel did not disclose any such intention, it has to be assumed that either he was not willing or had refused to answer the questions the replies to which were to be obtained by the Court.

(4) Having given my thoughtful consideration to the entire matter, though I am inclined to accept the stand of the learned counsel for the appellants that in the instant case till their counsel

in the trial court had either expressed his unwillingness or refusal to answer the questions which the court wanted to elicit, there was no justification either to summon the defendants for the said purpose or to strike off their defence, yet the contention of the learned counsel that there should have been a formulation of the questions which the court wanted to put to the defendants deserves to be rejected. No doubt, it is true that the intention of the rule is to enable the court not only to get obscure points cleared by obtaining the information from either of the parties but also, if possible, to get admissions so as to narrow down the issues raised in the pleadings but the rule being a penal provision, its terms have essentially to be applied strictly before the court can justifiably pass an order striking off the defence of a party. It is abundantly clear from the phraselogy of the rule itself that before the court requires the personal appearance of a party, it should essentially examine the parties' counsel and if it still feels that further elucidation of any point or question is necessary it may call the party in person. As has been observed by this Court earlier in *Shri Saraswati Spinning Mills, Bhiwani* vs. *M/s Gheru Lal Bal Chand Abohar,* (1), normally the admsision or denial of a document is done by the counsel for the parties and it is only when the counsel is unable to do that that the necessary may arise for summoning the party in person. The trial Court appears to have completely ignored this aspect of the matter while striking off the defence of the defendant-appellants. I, therefore, find it impossible to sustain the approach and the conclusion, i.e., the granting of the decree by striking off the defence of the appellants.

(5) Thus, for the reasons recorded above, this appeal is allowed and while setting aside the judgment and decree in question I sent the case back to the trial court for decision afresh in accordance with law. It hardly need be emphasised that since the matter has been overdelayed, the court will make it convenient to decide it at the earliest, i.e., without any undue loss of time.

(6) The parties through their counsel are directed to appear before the trial court on 27th March, 1989.

SCK.

(1) AIR 1981, Punjab and Haryana, 299.