

Court No. - 2

Case :- MATTERS UNDER ARTICLE 227 No. - 4925 of 2023

Petitioner :- Heera Lal Chhabra

Respondent :- Nawal Kishore Agrawal

Counsel for Petitioner :- Ashish Agrawal

Counsel for Respondent :- Shikhar Tripathi, Shrey Sharma

Hon'ble Neeraj Tiwari, J.

1. Heard Sri Ashish Agrawal, learned counsel for the petitioner and Sri Shrey Sharma, learned counsel for the respondent.
2. Learned counsel for the petitioner submitted that earlier plaintiff-respondent has filed SCC Suit No. 48 of 2014 in which date of 5.3.2022 has been fixed, but learned counsel for the defendant was busy in some other Court, therefore, he could not appear before the Court. On the very same day, Court has passed order to proceed ex-parte. Against that he has filed recall application on 22.3.2022, which was rejected vide order dated 28.7.2022. Against the said order, petitioner-defendant has preferred SCC Revision No. 101 of 2022, which was also dismissed vide order dated 12.4.2022.
3. Learned counsel for the petitioner further submitted that cause of non appearance of leaned counsel for the defendant is genuine as he is arguing before the another Court. Further, in paragraph 39 of the petition, he undertakes that he would appear each and every date before the concerned Court without taking adjournment, therefore, order may be quashed and opportunity may also be given to accept the evidence of defence. He lastly submitted that Hon'ble Apex Court has discussed this aspect in the case of *The Secretary, Department of Horticulture, Chandigarh and Anr. Vs. Raghu Raj reported in JT 2008 (11) SC 397* and held that even if there is default on the part of advocate in not appearing at the time of hearing, defendant-petitioner shall not suffer injustice.
4. Sri Shrey Sharma, learned counsel for the plaintiff-respondent has vehemently opposed the submission and submitted that now the hearing is concluded and tomorrow is the date fixed for pronouncement of judgment. He further submitted that defendant-petitioner is habitual to abstain from hearing of the matter. First time Court vide order dated

28.4.2015 has proceeded to decide ex-parte against the defendant. The said order was recalled vide order dated 19.5.2015. He further submitted that again case was listed on 8.1.2018, but defendant had filed adjournment application, which was accepted by the trial Court with costs of Rs. 250/-. Thereafter, case was listed on 18.1.2018 and witnesses of both the parties are present, but counsel for the defendant is not present for cross examination and accordingly, opportunity of cross examination of P.W.-1 has been closed. The said order was recalled vide order dated 21.2.2019. Case was again listed on 16.9.2019, Court has fixed the date 1.10.2019 for cross examination of P.W.-1. On the next date i.e. 19.10.2019, P.W.-1 alongwith counsel for the plaintiff was present, but no one has appeared on behalf of the defendant and again cross examination of P.W.-1 has been closed. Further, on 14.11.2019, 10.1.2022 & 5.3.2022, learned counsel for the defendant was not present. He lastly submitted that suit was filed in the year 2014 and till 2022, approximately 22 adjournments have been sought by the defendant-petitioner. In support of his contention, he has placed reliance upon the judgement of Apex Court in the cases of ***Gayathri vs. M. Girish reported in 2016 0 SC 587 & Shiv Cotex vs. Tirgum Autoplast Ltd. reported in 2011 (9) SCC 678.***

5. I have considered the rival submission of learned counsel for the parties and perused the record, order sheets, impugned order and Order XVII Rule 1 of CPC. From perusal of the order sheet, facts so argued by the learned counsel for the respondent is absolutely correct. Undisputedly, defendant-petitioner sought adjournment after adjournment in so many occasions and trial Court has granted several opportunity, but even after defendant has misused the process of law either by seeking adjournment or being absent from the hearing of the matter.

6. Order XVII Rule 1 of CPC deals with adjournment, which is quoted hereinbelow:-

"Court may grant time and adjourn hearing.- (1) *The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the Suit for reasons to be recorded in writing:*

Provided that no such adjournment shall be granted more than three times to a party during hearing of the suit.

(2) ***Costs of adjournment***—*in every such case the court shall fix a day for the further hearing of the suit, and shall make such orders as to costs occasioned by the adjournment or such higher costs as the*

court deems fits:

Provided that,—

(a) when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary,

(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party,

(C) the fact that the pleader of a party is engaged in another court, shall not be a ground for adjournment,

(d) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another court, is put forward as a ground for adjournment, the court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time,

(e) where a witness is present in court but a party or his pleader is not present or the party or his pleader, though present in court, is not ready to examine or cross-examine the witness, the court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination in chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.

HIGH COURT AMENDMENTS

Allahabad.- Add the following further proviso:

'Provided further that no such adjournment shall be granted for the purpose of calling a witness not previously summoned or named, nor shall any adjournment be utilised by any party for such purpose, unless the Judge has made an order in writing under the proviso to Order -XVI, Rule 1.' (24.7.1926)."

7. From perusal of the same, it is very much clear that only three adjournments shall be granted to a party during the hearing of the suit and Order XVII Rule 2 further provides that engagement of pleader of party in another Court would not be ground for adjournment and here the case is entirely different it is case of 22 adjournments have been sought and even present petition has been filed for quashing of the order on the ground that counsel for petitioner-defendant was busy in other Court due to which, he could not appear, which is in teeth of provision of Order XVII of Rule 1 & 2 CPC.

8. I have perused the judgment of ***The Secretary, Department***

of Horticulture, Chandigarh (Supra) relied by the learned counsel for the petitioner. Relevant paragraph of the said judgment is quoted hereinbelow:-

"34. From the case law referred to above, it is clear that this Court has always insisted advocates to appear and argue the case as and when it is called out for hearing. Failure to do so would be unfair to the client and discourteous to the Court and must be severely discountenanced. At the same time, the Court has also emphasized doing justice to the cause wherein it is appropriate that both the parties are present before the Court and they are heard. It has been noted by the Court that once a party engages a counsel, he thinks that his advocate will appear when the case will be taken up for hearing and the Court calls upon the counsel to make submissions. It is keeping in view these principles that the Court does not proceed to hear the matter in absence of the counsel.

40. On the facts and in the circumstances in their totality, in our opinion, even though the learned counsel for the appellant was not present, it would have been appropriate, had the High Court granted an opportunity to the learned counsel for the appellant to make his submissions by adjourning the matter."

9. From perusal of the judgment of above paragraph, it is clear that even in case of default on the part of lawyer, opportunity has to be granted to the parties, but here the case is different. Not only one, but 22 adjournments had been sought either by defendant or his counsel. Therefore, as per spirit of the judgment, in case counsel of any party is absent on any occasion and opportunity has to be provided, but here this judgment would not rescue the case of petitioner-defendant considering his habitual default on different dates.

10. I have also perused the judgment of Apex Court in the case of **Gayathri (supra)** relied by the learned counsel for the respondent. Relevant paragraph of the said judgment is herebelow:-

"10. In the case at hand, as we have stated hereinbefore, the examination-in-chief continued for long and the matter was adjourned seven times. The defendant sought adjournment after adjournment for cross-examination on some pretext or the other which are really not entertainable in law. But the trial court eventually granted permission subject to payment of costs. Regardless of the allowance extended, the defendant stood embedded on his adamant platform and prayed for adjournment as if it was his right to seek adjournment on any ground whatsoever and on any circumstance. The non-concern of the petitioner-defendant shown towards the proceedings of the court is absolutely manifest. The disregard shown to the plaintiff's age is also visible from the marathon of interlocutory applications filed. A counsel appearing for a litigant has to have institutional responsibility. The Code of Civil Procedure so command. Applications are not to be filed on the grounds which we have referred to hereinabove and that too in such a brazen and obtrusive manner. It is wholly reprehensible. The law does not countenance it and, if we permit ourselves to say so, the professional ethics decries such practice. It is

because such acts are against the majesty of law."

11. In the judgment referred in above, in case of adjournment on seven times, Court has depreciated the conduct of counsel and not inclined to grant any relief. In the present case, approximately 22 adjournments have been sought by the defendant-petitioner, therefore, such acts are wholly reprehensible and against the majesty of law. Petitioner is not entitled for any sympathy from the Court.

12. This issue was again before the Apex Court in the case of **Shiv Cotex (Supra)** and while considering the issue of adjournment, Court has also considered the absence of counsel. Relevant paragraph of the said judgment is quoted hereinbelow:-

"It is sad, but true, that the litigants seek - and the courts grant -adjournments at the drop of the hat. In the cases where the judges are little pro-active and refuse to accede to the requests of unnecessary adjournments, the litigants deploy all sorts of methods in protracting the litigation. It is not surprising that civil disputes drag on and on. The misplaced sympathy and indulgence by the appellate and revisional courts compound the malady further. The case in hand is a case of such misplaced sympathy. It is high time that courts become sensitive to delays in justice delivery system and realize that adjournments do dent the efficacy of judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. The courts, particularly trial courts, must ensure that on every date of hearing, effective progress takes place in the suit."

16. No litigant has a right to abuse the procedure provided in the CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system. It is true that cap on adjournments to a party during the hearing of the suit provided in proviso to Order XVII Rule 1 CPC is not mandatory and in a suitable case, on justifiable cause, the court may grant more than three adjournments to a party for its evidence but ordinarily the cap provided in the proviso to Order XVII Rule 1 CPC should be maintained. When we say 'justifiable cause' what we mean to say is, a cause which is not only 'sufficient cause' as contemplated in sub-rule (1) of Order XVII CPC but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the court and such like cause.

The list is only illustrative and not exhaustive. However, the absence of the lawyer or his non-availability because of professional work in other court or elsewhere or on the ground of strike call or the change of a lawyer or the continuous illness of the lawyer (the party whom he represents must then make alternative arrangement well in advance) or similar grounds will not justify more than three adjournments to a party during the hearing of the suit. The past conduct of a party in the conduct of the proceedings is

an important circumstance which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit - whether plaintiff or defendant - must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril. Insofar as present case is concerned, if the stakes were high, the plaintiff ought to have been more serious and vigilant in prosecuting the suit and producing its evidence. If despite three opportunities, no evidence was let in by the plaintiff, in our view, it deserved no sympathy in second appeal in exercise of power under Section 100 CPC. We find no justification at all for the High Court in upsetting the concurrent judgment of the courts below. The High Court was clearly in error in giving the plaintiff an opportunity to produce evidence when no justification for that course existed."

13. In this matter, Apex Court has highly depreciated the tendency of grant of adjournment and also taken firm view that change of lawyer, continuance of illness of lawyer or similar grounds will not justify more than three adjournments to a party during the hearing of the suit. In the present case, number of adjournments are 22, therefore, present dispute is squarely covered with the ratio of law laid down by the Apex Court and petitioner is not entitled for any relief.

14. From perusal of the judgments cited hereinabove as well as Order XVII Rule 1 & 2 of CPC, it is apparently clear that intention of legislation is to complete the hearing of the suit at the earliest for which number of adjournments have been confined to three times only and further rigorous conditions have been imposed for grant of adjournment, which also negates engagement of counsel in another Court.

15. In light of interpretation made by the Apex Court, this Court is also of the view that adjournment has to be granted on bonafide reasons and unavoidable circumstances for limited occasion not for many occasion as the case is heard and further absence of counsel or his engagement in other Court cannot be ground for adjournment coupled with this fact that several adjournments were earlier sought.

16. In view of facts and circumstances of the case as well as law discussed hereinabove, no case is made out for interference in the impugned orders. The petition lacks merit and is, accordingly, **dismissed**. No order as to costs.

Order Date :- 10.5.2023

Junaid