

Reportable
IN THE HIGH COURT OF DELHI AT NEW DELHI

+FAO (OS) No.70/2008

Reserved on: 15.07.2008

Pronounced on: 25.07.2008

#Sh. Jasbir Sobti and others

!

....Petitioners

Through: Mr. Ashwani K. Mata,
Senior Advocate with Mr.D.P. Kaushik

Versus

\$Sh. Surender Singh

^

.....Respondent

Through Nemo

CORAM :-

***THE HON'BLE MR.JUSTICE A.K.SIKRI**

THE HON'BLE MR. JUSTICE MANMOHAN SINGH

- 1.Whether Reporters of Local papers may be allowed to see the Judgment?
- 2.To be referred to the Reporter or not?
- 3.Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

:

1. The appellants herein had filed CS(OS) No.883/2003. In this suit the appellants (hereinafter referred to as the 'plaintiffs') had prayed for money decree. The suit was instituted on 5.4. 2003. This suit has been dismissed by the learned Single Judge vide order dated 5.10.2007, as according to the learned Single Judge, the plaintiff had not cared to take proper and appropriate steps for prosecuting the

same. This appeal is preferred impugning the said order dated 5.10.2007. In order to appreciate as to whether the plaintiff was prosecuting the said suit with due diligence, we had summoned the suit file and have gone through the order-sheet. It is not necessary to reproduce the entire history of the case. We may state the events after the plaintiff amended the suit.

2. After the plaintiff was allowed to amend the plaint, time was granted to the defendant to file the written statement to the amended plaint and the matter was fixed by the Joint Registrar on 2.3.2006 for admission/denial of documents. On 2.3.2006, neither the plaintiff nor the defendant appeared and the Joint Registrar adjourned the case to 22.3.2006. On that date as well as the next date, i.e., 29.3.2006 the Joint Registrar/Presiding Officer was on leave and case was renotified on 31.3.2006. On 31.3.2006, when the case was taken up though proxy counsel appeared for the plaintiff, nobody appeared on behalf of the defendants. The Joint Registrar also noted that as the written statement to the amended plaint was not filed, the pleadings were not complete and thus, no admission/denial could be carried out. The matter was directed to be placed before the Court on 4.4.2006, which was the date already fixed. On that date, counsel for the defendant made a statement that

the defendant did not wish to file written statement to the amended
plaint and the written statement already filed be taken as the
written statement to the amended plaint also. On this statement
learned counsel for the plaintiff submitted that he would be moving
appropriate application under Order XII Rules 6 and 7 of the Code
of Civil Procedure for passing of the decree on the basis of
purported admissions on the part of the defendant. The plaintiff
thereafter moved that application in which notice was issued on
24.4.2006. This application, after reply, was heard on 8.8.2006 and
was dismissed by the learned Single Judge. The learned Single
Judge was of the opinion that there was no clear or unequivocal
admission on the part of the defendant and “unnecessary judicial
time has been wasted by a frivolous application.” While dismissing
the application, the learned Single Judge imposed cost of Rs.5,000/-
on the plaintiffs. In the suit it was directed that the parties to file
original documents within eight weeks and the matter was directed
to be listed before the Joint Registrar for admission/denial of
documents on 5.12.2006. On 5.12.2006, 12.2.2007, 24.4.2007 and
31.7.2007 the matter was taken up by the Joint Registrar. However,
the Joint Registrar was constrained to adjourn the matter on each
date as nobody appeared on behalf of the plaintiffs. On 31.7.2007,

following order was passed:-

“No receipt of cost is filed on record as per the orders of Hon’ble Court dated 08/08/2006. None is appearing for the plaintiff for the last three dates of hearing. Hence matter be placed before Hon’ble Court for further directions on 05/10/2007.”

3. It is, in these circumstances, when the matter came up before the learned Single Judge on 5.10.2007, the learned Single Judge was constrained to remark that the plaintiffs were not prosecuting the suit in right earnest. The order of the learned Single Judge forming this opinion is on the basis of the following reasons:-

- a) Nobody appeared on behalf of the plaintiffs on four dates before the Joint Registrar to carry out admission/denial of the documents;
- b) Though application of the plaintiffs under Order XII Rule 6 CPC was dismissed as frivolous with cost of Rs.5,000/-, which was to be paid to the Delhi High Court Mediation and Conciliation Centre, no receipt for payment of cost imposed by order dated 8.8.2006 was filed on record; and
- c) Though vide order dated 8.8.2006, eight weeks’ time was granted to the plaintiffs to file the documents, the documents were not filed within that time. Only on 5.10.2007 (the date on

which the suit is dismissed) statement was made by the learned counsel for the plaintiffs that after the last date of hearing, i.e., after 31.3.2007 documents were filed. Thus, the documents were not filed within the time stipulated. Though the documents were filed belatedly, only an oral plea was taken on 5.10.2007 that the same were not traceable earlier. However, no application for seeking extension of time to file those documents was moved. The learned Single Judge was, thus, constrained to observe:-

“In my considered view, this cannot be a reason for non-appearance on various dates of hearing. If the plaintiffs wanted further time to file a document, a request in accordance with law should have been made and it cannot be the privilege of the plaintiffs to absent himself/herself from the court proceedings.”

4. Another plea, which was taken for non-appearance before the Joint Registrar, was that the counsel had not noted the last date correctly. The learned Single Judge rightly brushed aside this submission stating that this could hardly be an explanation for non-appearance on four consecutive dates of hearing. We may note that it was not the case of the plaintiffs that on earlier occasions also the plaintiffs could not appear because of any wrong date etc. noted by the counsel. Thus, no explanation whatsoever was furnished as to why

the plaintiff was not appearing before the Joint Registrar for admission/denial of documents. We may observe at this stage that at the time of admission/denial of documents the plaintiff(s) or authorized representative(s) is/are required to appear and no reason is given as to why even the plaintiffs or at least one of them was not appearing to undertake this exercise.

5. Faced with such a situation Mr.Mata, learned senior counsel appearing for the plaintiffs, was candid in conceding that there were lapses on the part of the plaintiffs in prosecuting the suit and his only plea was that this appeal be taken as 'mercy petition' and in the interest of justice, another opportunity be granted to the plaintiffs to pursue the case. He made a fervent plea that the suit be decided on merits as the plaintiffs had filed suit for recovery of substantial amount and they should not be non-suited without adjudication of the claims on merits.
6. The question that arises for consideration is as to whether another opportunity is to be given to the plaintiffs under the cloak of 'in the interest of justice'. Answer to this question would lie in replying to the related question, namely, whether interest of justice demands that case is to be decided on merits even when there are lapses galore on the part of the plaintiffs in not prosecuting the case

diligently thereby delaying the process endlessly. We are afraid, in the name of justice no such licence can be given to the plaintiffs. No doubt, if there is a minor procedural lapse, that can be condoned and the main purpose of the Court is to see that such cases are decided on merits. However, that would not mean that the plaintiffs or the defendants are allowed to drag on the proceedings unnecessarily by taking adjournments continuously. Again that does not mean that the parties do not take steps in further progress of the case, namely, fail to file the documents, conduct admission/denial and even fail to appear repeatedly. We have to keep in mind the interest of opposing party as well. If the matter are dragged like this and the opposing party is made to appear on each date and asked to come on the next date only because nobody is appearing on behalf of the plaintiffs, it causes unnecessary harassment to the opposite party as well. Therefore, in all such matters the Court is under duty to weigh the interest of both the parties and maintain balance in so far as these conflicting interests are concerned.

7. The problem of arrears in the Indian courts is well known. We have 30 million cases pending in the various District Courts and in the High Courts. Many attempts are being made to clear these arrears

and to ensure that the cases are decided speedily and there is no unnecessary delay in the disposal of these cases. If the proceedings in a particular case linger on and the judgment is delivered and case decided after number of years, the adverse effects of this are well known. No doubt, if we have dictum 'Justice hurried is justice buried' on the one hand, we cannot gloss over another equally forceful maxim 'Justice delayed is justice denied'. In a situation like this, callousness, indifference and laxity on the part of the plaintiffs in pursuing the suit cannot be tolerated. It cannot be the privilege of the plaintiffs to file a suit and not to prosecute it or enter appearance or keep the matter pending indefinitely. A Division Bench of this Court of which one of us (A.K. Sikri, J) was party had the occasion to deal with precisely this very aspect in greater detail in the case of Naresh Chand Gupta v. Braham Prakash & Anr., (2007) 97 DRJ 193. Our purpose would be served in extracting following portion therefrom:-

“11.In The Executive Engineer and Ors. v. Machinery Parts Corporation - 129 (2006) DLT 629, this Court had an occasion to deal with almost similar situation and the Court was of the view that adjournments cannot be granted on mere asking of the parties for the purpose of evidence. This judgment was also affirmed by the Division Bench of this Court in Supreme Telecommunication Ltd. v. RPG Transmission Ltd. - 2006 (6) AD (Delhi 375. Following extract from this

judgment, wherein judgments of other High Courts are also taken note of and discussed, is worth to quote:

“The conduct of the defendants before the Court was of such a nature that the order passed by the learned Trial Court would not call for any interference. Furthermore, the court cannot keep on adjourning the case for evidence of the parties indefinitely and grant adjournments at the mere asking of the parties, without any plausible cause or reason. Reference in this regard can be made to the judgments in the cases of Chander Singh v. Chottulal AIR 1994 Raj 186 and Sarjeet Kaur v. Gurmail Singh and Anr. 1999 (3) PLR 402 (Vol.123). In the case of Sarjeet Kaur (supra), the Court held as under:

Language of the impugned order clearly shows that the plaintiff had exhausted all limits for seeking adjournment on every score, whatsoever. The very purpose of granting last opportunity stood frustrated by grant of six subsequent adjournments, but even then the plaintiff neither summoned witnesses nor examined any. Wonder there was any other choice left before the learned trial court but to pass the impugned order. This court had the occasion to discuss the scope of such power of the court and consequence of persistent default on the part of the party in the trial Court, in the case of Joginder Singh and Ors. v. Smt. Manjit Kaur Civil Revision No. 5885 of 1998, decided on 14.1.1999, held as under:

The cumulative effect of the provisions of Order 18 Rule 2 read with Rules 1 and 2 of Order 17 of Code of Civil Procedure and inherent powers of the Civil Court vested in it under Section 151 of the Code, placed an implied obligation on the Court not to adjourn the case unless sufficient cause was shown. The cause by itself cannot always be treated as a ground for repeated adjournments. Un-necessary and avoidable adjournments must be denied by the Courts. On

the one hand, trial Courts are expected to dispose of suits and other proceedings expeditiously, and on the other, if parties to a lis are permitted to get the suits adjourned on the mere asking and that too for the indefinite times, it would frustrate the very spirit behind the provisions of the Code of Civil Procedure.

Obligation on a Court cannot be read as construed in isolation. It must find its reasoning from the basic concept of genuine attitude of the litigant. A litigant must help the Court by effective participation for expeditious disposal of the suit. Having taken more than six opportunities after the last opportunity was granted by the Court, the plaintiff can hardly challenge the correctness of the impugned order and more particularly on the ground that the learned trial Court has failed to exercise jurisdiction vested in it or the trial court has wrongly exercised jurisdiction.

The Rajasthan High Court in the case of Chander Singh v. Chottulal AIR 1994 Raj 186, while commenting upon the afore-said provisions of the Code, held as under:

It is clear from the order-sheet of the case that the learned trial Court repeatedly adjourned the case in utter disregard of the provisions of Order 17, Rule 1, C.P.C. Its provisos (b) and (c) run as under:

(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.

Such liberal attitude of the trial Courts is mainly responsible for the huge arrears of cases and

inordinate delay in their disposal. The learned trial Court should have closed the defendant's evidence much earlier. It had acted illegally in granting said adjournments to the defendant. It has not acted illegally or with material irregularity in the exercise of its jurisdiction in any manner in passing the impugned order.

The conduct of the plaintiff-petitioner no way demands exercise of judicial discretion in the Court in his favour on the grounds of equity or legal maxims. Prudent reasoning leads one to no other conclusion but to one that the learned trial Court was fully justified and in fact was left with no alternative other than closing the evidence of the petitioner.”

12. Again, in ***Uttar Pradesh State Bridge Cor. v. Overseas Water Proofing Corpn. - 2006 (130) DLT 182***, the Court expressed its anguish and concern over the tendency of the parties to drag the proceedings in the following terms:

“8. Lately, it has been noticed by this Court that there is a great tendency to drag proceedings by filing frivolous applications and/or seeking adjournment on grounds of non-availability of counsel as also misusing the courtesy extended to counsel by courts of passing-over matters when called out. Another ground ordinarily pressed into service is that counsel is busy in a higher court. The sum total is that cases drag on from year to year and each adjournment adds to arrears. The back-log increases to the extent that the daily board becomes unmanageable. Even in this Court six to seven cases every day are filed for condoning defaults. Each time a petition for condoning default is brought before the High Court it takes on an average six hearings for it to be disposed of while the case in the trial court comes to a standstill. All this is done in the name of justice to the litigant in spite of default of lawyers.

9. In the present case, instead of proceeding with the matter after default was condoned on costs imposed, an application was moved for waiving of costs, obviously, only to delay proceedings. Having carefully considered the facts of this case, this Court is of the opinion that ends of justice demand a speedy trial which cannot be allowed to be defeated by the so-called tricks of trade. Courts must firmly put down the practice of frivolous adjournments and move ahead with cases so that the same are disposed of as quickly as possible. This of course does not mean that no adjournment will be granted but adjournments should be granted only in exceptional cases by adopting a more rational approach. This is the only method of managing workload and disposing of cases in shorter duration.”

13. Order 17 of the Code of Civil Procedure in its unamended form was commented upon by the Apex Court in **Bashir Ahmed v. Mehmood Hussain Shah – AIR 1995 SC 1857**, in the following words:

“The Rule thus indicates that protraction of trial of the suit should not be encouraged and the court shall try the suit as expeditiously as possible. If the adjournment has occasioned on any sufficient ground, then it may, in an appropriate case, adjourn to a shorter date asking the party seeking adjournment to pay costs incurred by the party who got the witnesses produced and was ready to proceed with trial.”

14. Delay which occurs due to unnecessary adjournments on the part of one or the other party has been a matter of concern by the judiciary and legislature alike. Sweeping and important amendments were made in the Code of Civil Procedure with a purpose to ensure speedy disposal of cases. In the process, Order 17 of the Code of Civil Procedure was also amended. Though there was no provision for granting adjournments

for recording the evidence earlier, amendment now provides that a party shall not be granted adjournment more than three times during hearing of the suit. Purpose obviously is to put a cap on the number of adjournments which the parties take in adducing the evidence. In **Salem Advocate Bar Association, Tamil Nadu v. Union of India – AIR 2005 SC 3353**, the Supreme Court commented upon these amendments in Order 17 Code of Civil Procedure in the following words:

29. Order XVII of the Code relates to grant of adjournments. Two amendments have been made therein. One that adjournment shall not be granted to a party more than three times during hearing of the suit. The other relates to cost of adjournment. The awarding of cost has been made mandatory. Costs that can be awarded are of two types. First, cost occasioned by the adjournment and second such higher cost as the court deems fit.

30. While examining the scope of proviso to Order XVII Rule 1 that more than three adjournments shall not be granted, it is to be kept in view that proviso to Order XVII Rule 2 incorporating Clauses (a) to (e) by Act 104 of 1976 has been retained. Clause (b) stipulates that no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party. The proviso to Order XVII Rule 1 and Order XVII Rule 2 have to be read together. So read, Order XVII does not forbid grant of adjournment where the circumstances are beyond the control of the party. In such a case, there is no restriction on number of adjournments to be granted. It cannot be said that even if the circumstances are beyond the control of a party, after having obtained third adjournment, no further adjournment would be granted. There may be cases beyond the control of a party despite the party having obtained three adjournments. For instance, a party may

be suddenly hospitalized on account of some serious ailment or there may be serious accident or some act of God leading to devastation. It cannot be said that though circumstances may be beyond the control of a party, further adjournment cannot be granted because of restriction of three adjournments as provided in proviso to Order XVII Rule 1.

31. In some extreme cases, it may become necessary to grant adjournment despite the fact that three adjournments have already been granted (Take the example of Bhopal Gas Tragedy, Gujarat earthquake and riots, devastation on account of Tsunami). Ultimately, it would depend upon the facts and circumstances of each case, on the basis whereof the Court would decide to grant or refuse adjournment. The provision for costs and higher costs has been made because of practice having been developed to award only a nominal cost even when adjournment on payment of costs is granted. Ordinarily, where the costs or higher costs are awarded, the same should be realistic and as far as possible actual cost that had to be incurred by the other party shall be awarded where the adjournment is found to be avoidable but is being granted on account of either negligence or casual approach of a party or is being sought to delay the progress of the case or on any such reason. Further, to save proviso to Order XVII Rule 1 from the vice of article [14](#) of the Constitution of India, it is necessary to read it down so as not to take away the discretion of the Court in the extreme hard cases noted above. The limitation of three adjournments would not apply where adjournment is to be granted on account of circumstances which are beyond the control of a party. Even in cases which may not strictly come within the category of circumstances beyond the control of a party, the Court by resorting to the provision of higher cost which can include punitive cost in the discretion of the Court, adjournment beyond

three can be granted having regard to the injustice that may result on refusal thereof, with reference to peculiar facts of a case. (Emphasis added **We may, however, add that grant of any adjournment let alone first, second or third adjournment is not a right of a party. The grant of adjournment by a court has to be on a party showing special and extraordinary circumstances. It cannot be in routine. While considering prayer for grant of adjournment, it is necessary to keep in mind the legislative intent to restrict grant of adjournments.**)

Guided by these considerations as well, we are of the opinion that the learned trial court was right in refusing to grant further adjournment and rightly closed evidence of the appellant.

15. Learned counsel for the appellant had referred to the judgment of the Division Bench of this Court in **Malhan Builders & Ors. v. Durkhanie Jadran & Ors. - 2006 (91) DRJ 106 (DB)**. However, we are of the opinion that this judgment would not come to the rescue of the appellant. In that case also the evidence of the plaintiff was closed. The Division Bench held that Court was entitled to proceed with the case and to give decisions on merits. The plaintiff was, however, given one opportunity to lead evidence only because of the reason that witness had appeared three times on earlier occasion but it was the defendant who had avoided to cross-examine him and further on the particular day when evidence was closed witness was disabled due to illness of his mother. In the present case, the defendant has not taken any undue advantage or adjournment by avoiding to cross-examine the witness. It is the witness who did not appear on most of the hearings. He had not appeared before 3.10.2001 which led to adjournments. Even when he appeared on one or two occasions, request was made by the plaintiff for adjournment either on the ground that counsel was not available or the witness was not in a position to

give the evidence because of his so-called illness. Even on 3.10.2001, when the examination-in-chief of PW1 was recorded and the defendant partly cross-examined the said witness, further cross-examination had to be deferred because of non-availability of the plaintiff's counsel. Further, as already noted above, even on the particular day i.e. 1.3.2002, when the evidence was closed, the trial court found that false plea regarding illness of witness was taken."

8. In the present case as conceded by the learned counsel for the appellants/plaintiffs himself, there is no error in the impugned order passed by the learned Single Judge, but still the appellants want that the suit be restored and proceed on merits. In the facts and over all circumstances of this case and having regard to our discussion above, we are afraid that we cannot accede to this request of the appellants. We, therefore, are constrained to dismiss this appeal. Since nobody had appeared on behalf of the respondent at the time of arguments, we are not inclined to impose any cost on the appellants. The appeal is accordingly dismissed without costs.

(A.K. SIKRI)
JUDGE

July 25, 2008
hp.

(MANMOHAN SINGH)
JUDGE