

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

APPEAL SUIT No. 1428 OF 1997

JUDGMENT:

When the matter was listed on 27.08.2015, there was no representation on either side and, hence, the matter was directed to be listed under the caption 'for dismissal' on 21.09.2015. Accordingly, when the matter appeared in the cause list on 22.09.2015 under the same caption, learned counsel advanced his argument in part and, at his request, the matter is posted to this date, under the same caption. Today, Smt. K. Mahalakshmi, learned counsel, appearing on behalf of Sri V.V.L.N. Sarma, learned counsel for the appellants, sought time to advance argument in the matter. However, this Court is not inclined to grant adjournment in view of the principle laid down by the Apex Court in *M/s. Shiv Cotex Vs. Tirgun Auto Plast Private Limited and others*^[1], wherein it was held as follows:

"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."

Hence and in view of the principle laid down by the Apex Court in ***Shiv Cotex*¹**, the Appeal Suit is liable to be dismissed.

Accordingly, the Appeal Suit is dismissed for non-prosecution.

In consequence, miscellaneous petitions, if any, pending in this Appeal, shall stand dismissed. No order as to costs.

**M. SATYANARAYANA MURTHY,
J**

Date: 29.09.2015.
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[\[1\]](#) 2011 (9) SCC 678