HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.M.S.A.No.36 of 2009

JUDGMENT:

This matter was listed on 04-06-2015 for hearing. On that day, as there was no representation for the appellant, it was directed to be listed on 05-06-2015 and at request, adjourned to 10-06-2015. Again on 10-06-2015, as there was no representation for the appellant, the matter is directed to be listed to this date under the caption 'for dismissal'. Thus, in one month four adjournments were granted to the appellant to proceed with the argument in this appeal. Even today, Mr.Mangulal, Advocate on behalf of Sri Peeta Raman, learned counsel appearing for the appellant, requested to grant time for one week. But I am not inclined to grant time for the reason that sufficient time has already been granted. Granting of adjournment is not as matter of course, it is a matter of exception. In **M/s.Shiv Cotex v.Tirgun Auto Plast P.Ltd.& Ors**[1]., the Apex Court in para No.15 of the judgment held as follows:

> " Equally important, the High Court upset the concurrent judgment and decree of the two courts on misplaced sympathy and non - existent justification. The High Court observed that the stakes in the suit being very high, the plaintiff should not be non-suited on the basis of no evidence. But, who is to be blamed for this lapse? It is the plaintiff alone. As a matter of fact, the trial court had given more than sufficient opportunity to the plaintiff to produce evidence in support of its case. As noticed above, after the issues were framed on July 19, 2006, on three occasions, the trial court fixed the matter for the plaintiff's evidence but on none of these dates any evidence was let in by it. What should the court do in such circumstances? Is the court obliged to give adjournment after adjournment merely because the stakes are high in the dispute? Should the court be a silent spectator and leave control of the case to a party to the case who has decided not to take the case forward? 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".

It is further observed in para No.16 as under:

" 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."

In Dhanaraj Lilaram Motwani and another vs.Rajendra Kumar Dayachand Jain[2], the Bombay High Court ruled that "*no adjournment shall be granted at the request of the party, except where the circumstances are beyond the control of that party. The rule further provides that a pleader of the party is engaged in another court shall not be a ground for adjournment. It is also provided that where the pleader is unable to conduct the case for any reason other than his being engaged in another Court and such reason 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. It is also provided that 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."*

In Noor Mohammed v.Jethanand and another[3], the Apex Court relying on Shiv Cotex case referred supra, Ramon Services Pvt. Ltd. V.Subhash Kapoor and others[4], Mahabir Prasad Singh v.Jacks Aviation Pvt. Ltd[5]., Pandurang Dattatraya Khandekar v.Bar Council of Maharashtra, Bombay and others[6] and Lt.Col.S.J.Chaudhary v.State

(Delhi Administration)[7] held that, ***it shall be the duty of counsel as officer of the Court to assist Court in properly prepared manner and not to seek unnecessary adjournments.***

In the present case, on first occasion when the matter was listed on 04-06-2015, the Advocate neither present nor represented the matter and again posted to 05-06-2015. On that day also, there was no representation and sought time on the ground that he was suffering from viral fever and the same was posted to 10-06-2015. On 10-06-2015, there was no representation in the appeal. Thereafter, the matter was directed to be listed to this date. Even today, inspite of counsel for the appellant Peeta Raman appearing before the Court made a request through Sri Mangulal, Advocate for grant of another week and the conduct in conducting the proceedings, if taken into consideration,

it is evident the appellant is not interested in prosecuting the proceedings and he has succeeded in his attempt to get the adjournment one after the other on one pretext or the other for four adjournments in a month. Further Courts shall not become privy to such delay and

as such I am not inclined to become privy for the delay Therefore, the appellant did not deserve any sympathy and adjournment is rejected.

Having regard to the above, the Appeal is dismissed. But, without costs. In consequence, Miscellaneous Petitions, if any, pending in this Appeal shall stand dismissed.

_____

M. SATYANARAYANA MURTHY, J

26-06-2015
nvl

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.C.C.A.No. 165 of 1997

Date. 23-01-2015

nvl

---

[1] 2011 (4) RCR (Civil) 807

[2] AIR 1996 Bombay Page 3

[3] (2013) 5 SCC 202

[4] AIR 2001 SC 207

[5] AIR 1999 SC 287

[6] (1984) 2 SCC 556

[7] AIR 1982 SC 618