

HIGH COURT OF CHHATTISGARH, BILASPURMisc. Appeal No.1241 of 2003

Smt. Pushpa Devi Kothari, aged about 52 years, W/o Shri Bhikamchand Kothari, R/o Housing Board Colony, Lalbagh, Rajnandgaon (C.G.)

---- Appellant
(Plaintiff)

Versus

1. Rajendra Kumar Gupta, S/o Shri Mahavir Prasad Gupta, aged about 55 years, R/o Bandha Bazar, Tah. Mohala, Distt. Rajnandgaon (C.G.)
2. Brijendra Lal Gupta, S/o Shri Mahavir Prasad Gupta, aged about 52 years, Occupation C.A., R/o H.S.C.L., Bhilai, Distt. Durg (C.G.)
3. Smt Rani Bai, W/o Shri Radheshyam Gupta, D/o Shri M.P. Gupta, R/o Makhani Chowk, Yawatmal, Distt. Yawatmal (Maharashtra)
- 3A. Smt. Brij Kumari Gupta, W/o Lakhan Lal Gupta, D/o Shri M.P. Gupta, R/o Ramgudi Para (Baniyapara), Raigarh, Distt. Raigarh (C.G.)

---- Respondents
(Defendants)

For Appellant: Mr. Aditya Bharadwaj, Advocate.
For Respondents No.1, 3 and 3A: -
Mr. B.P. Gupta, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

30/01/2017

1. The appellant's suit was dismissed in default by the trial Court against which she preferred an application for restoration under Order 9 Rule 9 of the CPC and by order dated 26-10-2002, the application for restoration was dismissed, as the plaintiff failed to produce evidence in that application.
2. Mr. Aditya Bharadwaj, learned counsel appearing for the appellant, submits that the plaintiff could not appear as her husband

Bhikamchand, who was likely to appear in the said application for evidence, suffered high blood-pressure and could not appear which was opposed by learned counsel appearing for respondents No.1, 3 and 3A. The trial Court by its impugned order taking notice of the fact that thrice opportunity for hearing was granted to the appellant, rejected the application and thereby rejected the application for restoration.

3. I have heard learned counsel for the parties and considered their rival submissions and also gone through the record with utmost circumspection.
4. The fact remains that application for restoration was filed stating that the appellant's husband suffered high blood-pressure and therefore he could not appear. The trial Court ought to have considered the fact as to whether the cause shown by the appellant for non-appearance on that day was reasonable cause or not. The trial Court should not have impressed with the earlier grant of three opportunities to the plaintiff/appellant. The Supreme Court in the matter of **State Bank of India v. Chandra Govindji (Km.)**¹ has considered this aspect and held as under: -

"7. In ascertaining whether a party had reasonable opportunity to put forward his case or not, one should not ordinarily go beyond the date on which adjournment is sought for. The earlier adjournment, if any, granted would certainly be for reasonable grounds and that aspect need not be once again examined if on the date on which adjournment is sought for the party concerned has a reasonable ground. The mere fact that in the past adjournments had been sought for would not be of any materiality. If the adjournment had been sought for on flimsy grounds the same would have been rejected. ..."

5. Likewise, the Supreme Court in the matter of **Salem Advocate Bar**

1 (2000) 8 SCC 532

Association, Tamil Nadu v. Union of India² has also held as

under: -

"31. 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.

32. 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 also 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. 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."

6. Thus, having ascertained the legal position, keeping in mind the principles laid down by the Supreme Court, it cannot be held that the trial Court is justified in refusing adjournment and in rejecting the plaintiff's application filed for restoration of suit which was dismissed in default. Accordingly, the impugned order dated 26-10-2002 is hereby set aside and MJC No.13/1996 is restored to its original number for hearing and disposal in accordance with law, subject to payment of cost of ₹ 2,000/- to the defendants. Since the application is pending consideration since 1996, the 1st Additional District Judge, Rajnandgaon / trial Court is directed to consider and decide the said MJC within three months from the date of receipt of a copy of this order.
7. The miscellaneous appeal is allowed to the extent indicated herein-above. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge