

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NOs.3335 & 3155 OF 2015

COMMON ORDER:

Both the civil revision petitions are filed under Article 227 of the Constitution of India, challenging the orders passed in I.A.Nos.530 & 531 of 2014 in R.C.No.320 of 2013 dated 16.04.2015 passed by the III Additional Rent Controller, Hyderabad, orders of the Trial Court in both I.As read as follows:

“PW1 is present and wait upto 4 P.M. from 10.30 A.M. The counsel for petitioner did not turn upto the cross-examination P.W.1 till 4 P.M. Conditional order not complied. Hence, right of petitioner in this I.A to crossexamine P.W1 is forfeited. Accordingly, this petition is dismissed.”

I.A.No.531 of 2014 in R.C.No.320 of 2013 was filed under Order XVIII Rule 17 r/w Section 151 of C.P.C to recall PW1 for the purpose of cross-examination on various grounds. Similarly I.A.No.530 of 2014 in R.C.No.320 of 2013 was filed under Section 151 C.P.C to reopen the evidence of the petitioner for the purpose of cross-examination on various grounds.

Despite the orders passed by the III Additional Rent Controller, Hyderabad, in both I.As, the counsel for the petitioner did not turn-up to cross-examine PW1 till 4 PM on the particular date, obviously for different reasons, the matter was dragged sufficiently for such a long time on one pretext or the other.

In **Shiv Cotex v. Tirgun Auto Plast Private Limited and others**¹ the Supreme Court heavily laid on the practice of granting adjournments, laid down guidelines in granting adjournments describing the procedure of granting adjournments have grown like cancer corroding the entire body of justice delivery system and directed the judges to be pro-active while observing that when the Advocate is facing some inconvenience, the Advocate has to make necessary alternative arrangements and directed the Courts not to grant adjournments on mere asking and paragraph 16 of the said judgment reads as follows:

“16. No. litigant has a right to abuse the procedure provided in the Code of Civil Procedure. 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 Code of Civil Procedure 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 Code of Civil Procedure 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 Code of Civil Procedure 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

¹ (2011) 9 SCC 678

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 Code of Civil Procedure. 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.”

(emphasis supplied)

When the matter is listed for hearing, it is for the petitioner or his/her counsel to make necessary arrangement to cross-examine the witness on the day fixed, more particularly, when conditional order was passed, but in utter disregard of orders the Court, the counsel did not turn up or did not make necessary alternate arrangements.

In **Gayatri v. M. Girish**² the Apex Court while dealing with similar cases, highlighted the responsibility of an Advocate in seeking adjournments and filing petitions one after the other and held that in a democratic set-up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly. Fragmentation of faith has the effect-potentiality to bring in a state of cataclysm where justice may become a casualty. A litigant expects a reasoned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the altar of reasons. Timely delivery of justice keeps the faith ingrained

² AIR 2016 SC 3559

and establishes the sustained stability. Access to speedy justice is regarded as a human right which is deeply rooted in the foundational concept of democracy and such a right is not only the creation of law but also a natural right. This right can be fully ripened by the requisite commitment of all concerned with the system. It cannot be regarded as a facet of Utopianism because such a thought is likely to make the right a mirage losing the centrality of purpose. Therefore, whoever has a role to play in the justice-dispensation system cannot be allowed to remotely conceive of a casual approach and again held that thus, from the aforesaid, it is clear as day that everyone involved in the system of dispensation of justice has to inspire the confidence of the common man in the effectiveness of the judicial system. Sustenance of faith has to be treated as spinal sans sympathy or indulgence. If someone considers the task to be Herculean, the same has to be performed with solemnity, for faith is the "élan vital" of our system.

In **Bagai Construction through its Proprietor Lalit Bagai v. Gupta Building Material Store**³ Apex Court again highlighted the power of Court under Order XVIII Rule 17 and power under Section 151 C.P.C to reopen the case by recalling the witness by filing an application at the belated stage of the suit. More particularly, when the matter is posted for judgment and held as follows:

“The perusal of the materials placed by the Plaintiff which are intended to be marked as bills have already been mentioned by the Plaintiff in its statement of account but the original bills have not been placed on record by the Plaintiff till the date of filing of such application. It is

³ (2013) 14 Supreme Court Cases 1

further seen that during the entire trial, those documents have remained in exclusive possession of the Plaintiff but for the reasons known to it, still the Plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial Court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the Plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial Court, there is no acceptable reason or cause which has been shown by the Plaintiff as to why these documents were not placed on record by the Plaintiff during the entire trial. Unfortunately, the High Court taking note of the words "at any stage" occurring in Order XVIII Rule 17 casually set aside the order of the trial Court, allowed those applications and permitted the Plaintiff to place on record certain bills and also granted permission to recall PW-1 to prove those bills. Though power Under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of the court and Court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial Court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 of Code of Civil Procedure, the Plaintiff cannot be permitted.

After change of various provisions by way of amendment in the Code of Civil Procedure, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the Plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the pleadings and evidence. It is not the case of the Plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the Plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the Plaintiff, still Plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the Plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 Code of Civil Procedure."

(emphasis supplied)

In view of the law declared by the Apex Court in the judgments referred supra, it is the duty of an Advocate, being the member of judicial administration to narrow the procedural delays. But, referring to the said procedures, filing petitions one after the other for one reason or the other and sometimes successfully avoiding their appearance before the Court and if such procedure is encouraged, one day or the other, the system will collapse and thereby, loose faith and confidence of the litigant public. The present cases are the best examples where petitioner was permitted to cross-examine the witness by passing conditional order. Even thereafter, for one reason or the other, learned counsel for the petitioner did not turn-up to cross-examine.

Even in **Shiv Cotex** case, the Supreme Court directed the judicial officers to be more pro-active and shall not accede to the request of adjournments frequently in dispensation of justice. Despite it, the counsel conveniently appears to have avoided to appear before the Court to cross-examine the witness. In such a case, petitions cannot be allowed. Hence, I find no ground to set-aside the orders in I.A.Nos.530 & 531 of 2014 in R.C.No.320 of 2013 dated 16.04.2015 passed by the III Additional Rent Controller, Hyderabad, exercising power under Article 227 of Constitution of India, which is supervisory in nature and this Court can exercise such power in the circumstances where the Court failed to exercise its discretion that conferred on it and exercised discretion, which is not conferred.

It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in “**State (N.C.T. Of Delhi) vs Navjot Sandhu@ Afsan Guru**”⁴, that under Article 227 of Constitution of India the High Court can interfere with the directions of the Subordinate Courts only in the circumstances stated above.

In view of the law laid down by the Apex Court, this Court cannot exercise its power under Article 227 of the Constitution of India though the order is wrong, since the power can be exercised only to keep the subordinate Courts and Tribunals within its bounds. Therefore, I am unable to exercise power under Article 227 of the Constitution of India to interfere with the findings recorded by the Trial Court since the Trial Court acted within its bounds and passed the orders, which are under challenge.

Therefore, I find no merits in the revision petitions and both the civil revision petitions are liable to be dismissed.

In the result, both the civil revision petitions are dismissed.

Consequently, miscellaneous petitions, if any, pending in this petition, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:25.04.2017

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⁴ 2003 (6) SCC 641