

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.118

RSA No.3553 of 2017 (O&M)

Date of decision: 11.07.2017

Avtar Singh

....Appellant

versus

Pritam Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Arjun Veer Sharma, Advocate
for the appellant.

* * *

DEEPAK SIBAL, J. (Oral)

The present appeal has been filed at the instance of one of the plaintiffs who had instituted a declaratory suit inter alia seeking therein to declare as null and void mutation No.7789 dated 02.03.2015 in village Jodhan, Tehsil and District Ludhiana and mutation No.3409 dated 02.03.2015 in village Rattan, Tehsil and District Ludhiana, which had been entered in the revenue records in favour of the defendants-respondents on the basis of a Will of one Amarjit Kaur. The aforesaid Will of Amarjit Kaur was also challenged. The appellant alongwith his co-plaintiffs also sought possession of the suit property.

The Trial Court granted several opportunities to the plaintiffs before it to lead their evidence but the needful was not done. Resultantly, relying on Order 17 Rule 3(a) of the Civil Procedure Code, 1908 (for short the 'Code') as also the law laid down by the Apex Court in **M/s. Shiv Cotex**

versus Tirgun Auto Plast P. Ltd. and others, (2011) 4 SCC 817, the suit was dismissed.

The dismissal of the suit by the Trial Court, was approved by the Appellate Court on appeal.

Learned counsel for the appellant assails the above concurrent findings returned by the Trial Court as also the Appellate Court by submitting that after deposit of process fee and diet money it was not for the appellant to produce his witnesses as it then became the duty of the Court, by adopting coercive methods, to bring the cited witnesses before it.

After hearing learned counsel for the appellant, I am of the opinion that the present appeal must fail.

It is not disputed that after framing of issues by the Trial Court on 21.07.2015 the appellant was called upon to lead his evidence on 18.08.2015 but having failed to do so, the Trial Court, while adjourning the matter to 22.09.2015 granted another opportunity to him to lead his evidence. Such opportunity again having not been availed of, the appellant was yet again granted another opportunity to produce his evidence on 19.10.2015. However, on that day too no evidence was led by him. On 19.10.2015, counsel for the appellant stated at the bar that he would bring the cited witnesses at his own responsibility. Relying upon the statement and enabling the counsel for the appellant to produce the cited witnesses, the Trial Court adjourned the matter to 23.11.2015 but on that date too, no witness was produced. Another opportunity was then granted by the Trial Court for doing the needful and the matter was adjourned to 12.01.2016 but even on that date, the appellant failed to produce any witness. In the interest of justice, while granting one last opportunity, the matter was

adjourned to 06.02.2016 on which date one witness namely Harnek Singh was got examined-in-chief. However, his cross-examination was deferred for 11.03.2016 on which date, the appellant was required to produce Harnek Singh for his cross-examination as also his remaining evidence. However, on 11.03.2016, the Court was on leave and thus the appellant got one further opportunity to produce his evidence on 01.07.2016 but on that date neither Harnek Singh nor any other witness was produced by him. The Trial Court rather benevolently, while adjourning the matter to 07.09.2016 granted yet another opportunity to the appellant to conclude his evidence on which date, the Court being on leave, the appellant got another opportunity to conclude his evidence on 12.10.2016 but on that date too, no evidence was produced.

The undisputed facts, as noticed above, clearly show that in spite of several effective opportunities granted by the Trial Court, the appellant had failed to lead evidence in support of his case. This was in spite of the statement got recorded by his counsel on 19.10.2015 that he would produce the witnesses cited by the appellant on the next date. However, that was not to be not only for the next date after 19.10.2015 but also for several dates thereafter.

No justification is found on the record as to why, in spite of several effective opportunities granted to the appellant to lead his evidence he did not do so. Even before me, no reasons for the same are forthcoming.

Order 17 Rules 1, 2 and 3 of the Code, read as under:-

Order XVII
Adjournments

- 1. Court may grant time and adjourn hearing.- (1)**
The Court may, if sufficient cause is shown, at any stage of the suit, grant time to the parties or to any of them, and may from time to time adjourn

the hearing of the suit for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the suits.

(2) Costs of adjournment.- *In every such case the Court shall fix a day for the further hearing of the suit, and shall make such orders as to costs occasioned by the adjournment or such higher costs as the Court deems fit:*

- (a) When the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary,*
- (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,*
- (d) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, 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,*
- (e) 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.

2. *Procedure if parties fail to appear on day fixed.-*

where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

3. *Court may proceed notwithstanding either party fails to produce evidence, etc.-*

where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default-

(a) if the parties are present, proceed to decide the suit forthwith, or

(b) if the parties are, or any of them is, absent, proceed unde rule 2.

The afore-quoted provisions of the Code aim at speedy disposal of trials. Proviso to Order 17 Rule 1 stipulates that not more than three adjournments can be granted to a party to a suit and on the asking of an adjournment beyond the maximum number so provided the procedure as laid down under Rule 2 and 3 of Order 17 be followed by the Court to go ahead with the hearing/decision of the suit. The cap of three adjournments is not mandatory but any adjournment, especially after the prescribed cap of three adjournments, may be granted by the Trial Court only on justifiable cause shown by the party seeking the adjournment and that too after detailed

reasons to be recorded in writing. To hold otherwise would result in clogging of the justice delivery system and the public ultimately losing faith in the same.

The above-quoted provisions of the Code were interpreted by the Apex Court in M/s. Shiv Cotex's case (supra). In that case, the suit was fixed for evidence of the plaintiff on November 01, 2006, on which date, no evidence was led and the matter was adjourned to March 02, 2007, on which date also the plaintiff did not produce any evidence. The matter was again adjourned to May 10, 2007, on which date too, the plaintiff failed to produce any evidence. In these circumstances, the Trial Court proceeded under Order 17 Rule 3(a) of the Code and dismissed the suit. The appeal against the order of dismissal met the same fate. However, the High Court in second appeal after observing that the stakes of the plaintiff were high and therefore did not deserve to be non-suited for having not led evidence while allowing the appeal remanded the matter to the Trial Court for a fresh decision in accordance with law. In a challenge made to the judgment of the High Court, the matter reached the Apex Court, which held as under:-

"15. Second, and 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.

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.

17. In the result, the appeal is allowed and judgment and order of the High Court passed on September 20, 2010 is set aside. There shall be no order as to costs."

In M/s Shiv Cotex's case (supra) when three opportunities granted to the plaintiff to lead evidence were not availed of, the suit, as per Order 17 Rule 3(a) of the Code, was dismissed by the Trial Court. The Apex Court approved such dismissal after observing that the cap on adjournments, as provided in the proviso to Order 17 Rule 1 of the Code, is not mandatory. However, only on justifiable cause, shown the Court, may grant more than three adjournments to a party for leading its evidence but ordinarily the cap provided in the proviso to Order 17 Rule 1 of the Code should be maintained. If no justifiable cause is shown after a party to a suit has availed of three opportunities the Court should proceed with the matter in accordance with the procedure prescribed under Order 17 Rule 3 of the Code. The High Court was clearly held to have erred in giving the plaintiff therein another opportunity to lead evidence, after three opportunities had already been availed of and no justification was shown for any further opportunity.

In the present case the Trial Court, rather liberally, had granted to the appellant more than six effective opportunities to lead his evidence

which were not availed of. No justification was shown by the appellant before the Trial Court or the Appellate Court as also before me as to why the appellant failed to produce his evidence within and even beyond the cap of three adjournments as stipulated in the proviso to Order 17 Rule 1 of the Code.

In view of the above and in terms of the law laid down by the Apex Court in **M/s Shiv Cotex's case (supra)**, I find no reason to interfere with the concurrent findings arrived at by both the Courts below.

Dismissed.

(DEEPAK SIBAL)
JUDGE

11.07.2017

Jyoti 1

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No