

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 854 of 2018

1. Narayan S/o Late Motilal, aged about 42 years, Caste – Rajwar, R/o Village Jarhi, Tahsil – Pratappur, District Surajpur (C.G.)
 2. Jairam S/o Late Motilal, aged about 44 years, Caste Rajwar, R/o Village Jarhi, Tahsil – Pratappur, District Surajpur (C.G.)
 3. Pawan S/o Late Motilal, aged about 50 years, Caste – Rajwar, R/o Village Jarhi, Tahsil – Pratappur, District Surajpur (C.G.)
 4. Loli D/o Late Motilal W/o Thakur Prasad, aged about 38 years, Caste – Rajwar, R/o Village Pasla, Dumriya, Tahsil – Pratappur, District Surajpur (C.G.)
- Petitioners**

Versus

1. Arjun S/o Pandribai Aged About 51 Years R/o Village Gota, P.S. And Tehsil Pratappur, District- Surajpur, Chhattisgarh., District : Surajpur, Chhattisgarh
2. Ramkishun S/o Pandribai Aged About 49 Years R/o Village Gota, P.S. And Tehsil Pratappur, District- Surajpur, Chhattisgarh., District : Surajpur, Chhattisgarh
3. Santoshi Prasad S/o Pandribai Aged About 47 Years R/o Village Gota, P.S. And Tehsil Pratappur, District- Surajpur, Chhattisgarh., District : Surajpur, Chhattisgarh
4. Barato S/o Pandribai Aged About 55 Years R/o Village Dawankara, P.S. And Tehsil- Pratappur, District- Surajpur, Chhattisgarh., District : Surajpur, Chhattisgarh
5. Santra Bai S/o Pandribai Aged About 53 Years W/o Daroga, R/o Village Baijnathpur, P.S. Bhatgaon, District- Surajpur, Chhattisgarh.....(Plaintiff No. 1 To 5)
6. Nanki Wd/o Nanhu Aged About 60 Years Caste Rajwar, House Wife, R/o Village Jarhi P.S. Bhaygaon, Tahsil Pratappur, District- Surajpur, Chhattisgarh., District : Surajpur, Chhattisgarh
7. Gambhirram S/o Patar Bai Aged About 52 Years R/o Village Baijnathpur, P.S. Bhatgaon, District- Surajpur, Chhattisgarh., District : Surajpur, Chhattisgarh
8. Biharilal S/o Patar Bai Aged About 35 Years Occupation- Agriculture, R/o Village Jagdishpur (Adhik), P.S. Bhatgaon, District- Surajpur,

Chhattisgarh., District : Surajpur, Chhattisgarh

9. Maniya S/o Patar Bai Aged About 38 Years Caste- Rajwar, R/o Village Dumriya P.S. And Tehsil Surajpur, District- Surajpur, Chhattisgarh., District : Surajpur, Chhattisgarh

10. State Of Chhattisgarh Through Collector, Surguja, Chhattisgarh....
(Res. No. 6 To 10 Were Defendants No. 2 To 6)

---- Respondents

For Petitioners	:	Mr. Rakesh Pandey, Advocate.
For Respondent No. 10/ State	:	Mr. Arun Sao, Dy. A. G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

08/10/18

1. T.S. Thakur, C.J., speaking for the Supreme Court in the matter of **Anita Kushwaha v. Pushap Sudan**, emphasizing the need for speedy justice pertinently observed as under :-

“ Access to justice as a constitutional value will be mere illusion; if justice is not speedy justice delay, it is famously said, is justice denied. If the process of justice is so time consuming, laborious, indolent and frustrating for those who seeks justice that it dissuades or deters them from even considering resort to that process as an option, it would tantamount to denial of not only access to justice but justice itself.”

2. Similarly, Dipak Misra, J. (as then his Lordship was) speaking for the Supreme Court *qua* the speedy justice of civil cases, in the matter

of **Noor Mohammed v. Jethanand**¹, has held as under:-

“Timely delivery of justice keeps the faith ingrained 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.”

The above stated statements of law aptly and perfectly apply to the facts of the case in hand.

3. By the impugned order dated 24.07.2018, opportunity of defendants No. 1 to 4 / petitioners to cross-examine the plaintiffs' three official witnesses namely Lakhan Kashyap, Gopal Sharan Singh and D.N. Verma ex-registration clerk has been closed.

4. Mr. Rakesh Pandey, learned counsel appearing for the petitioners submits that trial Court is absolutely unjustified in rejecting the prayer for adjournment on the ground that suit is pending consideration for last 28 years and adjournment granted earlier was based on reasonable and adequate grounds and bonafide reasons. He would rely upon the decision of Supreme Court in the matter of **State Bank of India v. Km. Chandra Govindji**².

5. I have heard learned counsel for the petitioners / defendants No. 1 to 4 and considered his submissions and went through the record

1 (2013) 5 SCC 202

2 (2000) 8 SCC 532

with utmost circumspection.

6. The instant writ petition challenging the order of learned trial Court has arisen from the civil suit instituted by sole plaintiff Pandribai (she died during the pendency of the suit) way back on 15.03.1990 for declaration of her title and permanent injunction over the suit land. In the said suit, the petitioners / defendants No. 1 and 2 filed their written statement on 07.09.2006 and defendant No. 4 filed his written statement on 23.03.2007. It appears from the record that plaintiffs' evidence commenced in the month of July / August 2015. On 14.07.2017, plaintiffs' three official witnesses namely Lakhan Kashyap, Gopal Sharan Singh and Devendra Kumar Singh were examined, but they were not cross-examined by defendants, as defendant No. 1(a) and others filed an application under Order 17 Rule 1 CPC on the ground that his original counsel is engaged in Surajpur Court and unable to come and cross-examine the plaintiffs' witnesses, which was granted subject to payment of expenses to the witnesses present in the Court. The plaintiffs' witnesses namely Lakhan Kashyap and Gopal Sharan Singh again appeared before the trial Court on 15.09.2017 for their cross-examination but again on the application filed by the defendant under Order 17 Rule 1 CPC, trial Court adjourned the matter granting last opportunity to cross-examine the plaintiff witnesses. On 30.01.2018, only one witness Gopal Sharan Singh appeared for cross-examination, but again he was not

cross-examined by defendants as he filed an application under Section 11 CPC for dismissing the suit on the principle of *res-judicata*, which was rejected by the trial Court on that date. On 16.05.2018, Shri D. N. Verma, one of the plaintiffs' witnesses again appeared before the trial Court on service of summon, but again he was not examined and matter was adjourned.

7. Finally, on 24.07.2018, plaintiffs witnesses namely Gopal Sharan Singh, Lakhan Kashyap and D.N. Verma ex-registration clerk, Ambikapur appeared before the trial Court for their cross-examination, but again an application was filed for adjournment on the ground of non-availability of counsel for Defendant No. 2 Narayan. This time the trial Court firmly noted that examination-in-chief of all the witnesses has already been completed long back and said official witnesses have appeared before the trial Court regularly after their examination-in-chief, but they were not cross-examined by the defendants and finding no ground to adjourn the matter, rejected the application for adjournment and forfeited the defendants' opportunity to cross-examine the plaintiffs' above stated witnesses.

8. The question for consideration would be whether the trial Court is justified in refusing adjournment and forfeiting the defendants' opportunity to cross-examine the plaintiffs witnesses in above-stated facts of the case.

9. In order to consider the said question it would be appropriate to notice Order 17 Rule 1 of CPC :-

“O.17, R.1 – 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 the 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 suit.

(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] :

[Provided that,-

(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.]”

10. The above-stated Rule clearly provides that no adjournment shall be granted at the request of the party except where the circumstances are beyond the control of that party. It further provides that the fact that the 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 being engaged in another court, is put forward as a ground for adjournment, the Court shall not grant adjournment, unless it is

satisfied that the party applying for adjournment could not engage another pleader in time.

11. In practice, Order 17 Rule 1 CPC is more observed in breach than in compliance. Adjournments are sought for and granted by Courts as a matter of course defeating the legislative intention beyond enacting the said provision and as a result thereof, it takes years and years before proceedings are concluded before the trial Court and thereby Courts are burdened with cases. Time has come that this malady is treated with even hands at all levels and it is high time that all concerned should try and see that cases are not adjourned unnecessarily and at mere asking. The trial Courts are duty bound to implement and give effect to the provisions of amended Code and should not adjourn the cases, even on being asked on behalf of parties, in violation of statutory provisions and should follow the above-stated provisions for adjournment religiously and scrupulously without fail.

12. In the matter of **Manohar Singh v. D. S. Sharma and Another**³, the Supreme Court while considering Rule 1(2) proviso (e) of Order 17 CPC, held as under :-

“10. It is evident from Rule 1(2) proviso (e) of Order 17 CPC that where a witness is present in the Court, but the other side is not ready to cross-examine the

3 (2010) 1 SCC 53

witnesses, the Court can dispense with his cross-examination. But where a genuine and bonafide request is made for adjournment, instead of resorting to forfeiture of the right to cross-examine, the court may grant time by leaving cost(s).

“11. A conspectus of the above provisions clearly demonstrates that under the scheme of CPC, a suit cannot be dismissed for non-payment of costs. Non-payment of costs results in forfeiture of the right to further prosecute the suit or defence as the case may be. Award of costs, is an alternative available to the court, instead of dispensing with the cross-examination and closing the evidence of the witness. If the costs levied for seeking an adjournment to cross-examine a witness are not paid, the appropriate course is to close the cross-examination of the witness and prohibit the further prosecution of the suit or the defence, as the case may be by the defaulting party.

12. In this case, the plaintiff has harassed the defendants and its witness by seeking repeated adjournments. In view of it, the plaintiff's right to cross-examine DW 2 stands forfeited. However, as costs were levied, but were not paid, the court should have closed the evidence of DW. It is evident from Rule 1(2) proviso (e) of Order 17 CPC that where a witness is present in the Court, but the other side is not ready to cross-examine the witnesses, the Court can dispense with his cross-examination. But where a genuine and bonafide

request is made for adjournment, instead of resorting to forfeiture of the right to cross-examine, the court may grant time by leaving cost(s). 2, permitted the defendants to produce any further evidence (without any right to the plaintiff to cross-examine such witnesses) and then ought to have proceeded to dispose of the suit on merits by considering the material available and hearing the arguments of the defendants. The court could not have dismissed the suit.

13. In view of the above, we allow these appeals, set aside the judgments of the High Court and the trial court, restore the suit to its file, subject to the following :

(i) The right of the plaintiff to cross-examine DW 2 stands forfeited and he is barred from prosecuting the suit further.

(ii) The trial court shall however permit the defendants to let in any further evidence, hear arguments and then dispose of the suit.

(iii) However, if the appellant-plaintiff tenders the costs with an appropriate application under Section 148 CPC, the trial Court may consider his request in accordance with law. Even if the court extends the time for deposit, permits the plaintiff to pay the costs and prosecute the suit further, that will not entitle the plaintiff to cross-examine DW 2.

13. In this case, the defendants have harassed the plaintiffs and his official witnesses by seeking repeated adjournments and by not cross-

examining the plaintiffs' three official witnesses despite knowing the fact that they appeared before the trial Court leaving their official work on being summoned through process of the Court. In view of it, the defendants right to cross-examine the plaintiffs' witnesses has rightly been forfeited by the trial Court under Rule 1(2) proviso (e) of Order 17 CPC.

14. In the matter of **N. G. Dastane v. Shrikant S. Shivde and another**⁴, the Supreme Court has reiterated that seeking repeated adjournments for postponing examination of witnesses present in the court is improper and held as under :-

“20. Advocate abusing the process of Court is guilty of misconduct. When witnesses are present in Court for examination of the Advocate concerned has a duty to see that their examination is conducted. We remained that witnesses who come to the Court, on being called by the Court, do so as they have no other option, and such witnesses are also responsible citizens who have other work to attend for eking out livelihood. They cannot be treated as less respectables to be told to come again and again just to suit the convenience of the Advocate concerned. If the Advocate has nay unavoidable inconvenience it is his duty to make other arrangements for examining the witnesses who is present in Court. Seeking adjournments for postponing the examination of witnesses who are

4 AIR 2001 SC 2028

present in Court even without making other arrangements for examining such witnesses is a dereliction of Advocate's duty to the Court as that would cause much harassment and hardship to the witnesses. Such dereliction if repeated would amount to misconduct of the Advocate concerned. Legal profession must be purified from such abuses of the Court procedures. Tactics of filibuster, if adopted by an Advocate, is also professional misconduct.

15. In the matter of **State of U.P. v. Shambhu Nath Singh**⁵, the Supreme Court has deprecated the practice of courts adjourning cases without examination of witnesses, when such witnesses are in attendance. It was held in para-9 as under:-

“We make it abundantly clear that if witness is present in Court he must be examined on that day. The Court must know that most of the witnesses could attend the Court only at heavy cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meagre amount of Bhatta (allowance) which a witness may be paid by the court is generally a poor solace for the financial loss incurred by him. It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be

5 AIR 2001 SC 1403

reformed by presiding officers of the trial courts and it can be reformed by every one provided the presiding officer concerned has a commitment to duty. No sadistic pleasure in seeing how other persons summoned by him as witnesses are stranded on account of the dimension of his judicial powers can be a persuading factor for granting such adjournments lavishly, that too in a casual manner.”

16. In the matter of **Salem Advocate Bar Association Tamil Nadu v. Union of India**⁶, the Supreme Court while deprecating the grant of unnecessary adjournment, held that grant of adjournment by the court has to be on a party showing special and extraordinary circumstance. It cannot be in routine.

“**30.** Order XVII of the Code relates to grant of adjournments. Two amendments have been made therein. One that adjournment shall not be granted to be a party more than three times during hearing of the suit. The other relates to cost of adjournment. The awarding of cost has been made mandatory. Costs that can be awarded are of two types. First, cost occasioned by the adjournment and second such higher cost as the court deems fit.

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

⁶ AIR 2005 SC 3353

(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 extra-ordinary 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.”

17. Reverting to the facts of the present case, in light of principles of law laid down *qua* the adjournments in above stated judgments, it is quite vivid that in the present case, the defendants have harassed the plaintiffs and his witnesses by seeking repeated adjournments and by not cross-examining them despite their continuous appearance before the Court leaving their official public assignment at the cost of public. The plaintiffs kept their three official witnesses present before the Court several times through the process of Court but each time the defendants and their counsel sought adjournment therefore, defendants right to cross-examine the plaintiffs' evidence has been forfeited by the trial Court which is in accordance with Rule 1(2) proviso (e) of Order 17 CPC.

18. In view of the aforesaid Rule as well as the decision rendered by Supreme Court in the case of **Manohar Singh** (supra) and **N.G. Dastane** (supra), I do not find any perversity or illegality in the order of the trial Court to interfere with the impugned order in jurisdiction under Article 227 of the Constitution of India.

19. Before parting with the record, a note of caution is necessary for the trial Court. As noticed above, despite clear cut legislative mandate under Order 17 Rule 1 of CPC, the trial Court has violated Order 17 Rule 1 of CPC and breached therein, adjournment sought for and has been granted routinely on mere asking that too without imposition of cost which is not an intention beyond enacting Order 17 Rule 1 of CPC and the matter is still pending for more than 28 years. Several times the official witnesses were present but the trial Court did not adhere to Order 17 Rule 1 sub-rule (2)(a) which mandates that when the hearing of the case has commenced it shall be continued on day to day basis until all the witnesses in attendance have been examined or unless exceptional reasons are recorded that adjournment of hearing beyond following day is necessary. The trial Court has adjourned the hearing of suit after commencement of hearing and after attendance of the witnesses routinely adjourning the matter for weeks together without realizing the life of the suit as it is pending since 15.03.1990 which is clearly impermissible in law. The trial Court is directed to ensure strict compliance of Order 17 Rule 1 CPC while granting adjournments and to further ensure no unnecessary adjournments are granted. The trial Court is to keep in mind that justice is not only done but manifestly appears to be done as speedy justice is a part of human right. Timely delivery of justice is part of human right and denial of speedy justice is threat to public confidence

in the administration of justice [see (2017) 5 SCC 702, *Hussain and Others v. Union of India*].

20. In view of the aforesaid legal discussion, I do not find any merit in the writ petition. Accordingly, the writ petition deserves to be and is hereby dismissed with cost(s) of rupees ten thousand (Rs. 10,000/-) payable by the defendants / petitioner to the plaintiff.

21. The AR(J) is directed to send a copy of this order to the trial Court through District Judge, Surajpur. The trial Court is directed to expedite the trial and conclude it within a period of one month from the date of receipt of copy of this order, as the suit is pending since 15.03.1990.

Sd/-

(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

(SB : Hon'ble Shri Justice Sanjay K. Agrawal)

Writ Petition (227) No. 854 of 2018

Petitioners

Narayan & Others

Versus

Respondents

Arjun & Others

(Head-note)

(English)

Timely delivery of justice in civil cases is a part of human right.

(हिन्दी)

सिविल (व्यवहार) प्रकरणों में न्याय का यथासमय परिदान मानवाधिकार का एक अंग है।