

Appellant. On that day, the matter was adjourned to 15/01/2018 under caption for 'Dismissal'. He further submitted that on 15/01/2018 again at the request of learned counsel for the Appellant, the matter was adjourned for final hearing in the weekly board on 29/01/2018.

4. The learned counsel for the Respondent submitted that today again, the Advocate for the Appellant has asked for time on the ground that their arguing counsel is not available. Hence he is opposing for adjournment.

5. It is noted that when the matter was kept for dismissal, the advocate for the Appellant appeared and asked some time. Same was allowed by this Court. Today again, the Advocate for the Appellant has asked time on the ground that his arguing counsel is not available as he is in personal difficulty. This cannot be a ground for adjourning the matter. The matter is pending for hearing for long time. Hence this Court called upon the Advocate for the Appellant to start the arguments. At this

stage, the Advocate for the Appellant submits that he does not have instructions to go on with the matter.

6. It is to be noted that the Apex Court in the matter of ***Shiv Cotex Vs. Tirgun Auto Plast Pvt. Ltd. And Ors. 2012 (2) Mh.L.J. 439*** held that no litigant has a right to abuse the procedure provided in the Civil Procedure Code, 1908. Adjournments have grown like cancer corroding the entire body of justice delivery system. Paragraph No.16 reads thus;

“6. 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 the 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 heard. The parties to a suit—whether the

Plaintiff or the 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 the 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.”

7. Considering the fact that the Advocate appearing for the Appellant is not ready and willing to go on with the matter, the law declared by the Apex Court in the matter of Shiv Cotex (supra), the First Appeal stands dismissed for non-prosecution.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)