

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2018

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

C.R.P.(PD).No.3429 of 2018

Samba Vaidyanathan

... Petitioner

Vs

1. Raja Rama Varma

2. S.Chitra

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to direct the Principal District Munsif, Mayiladuthurai to dispose of the I.A.No.116/2018 in O.S.No.59/2018 on the file of Principal District Munsif, Mayiladuthurai, within a time frame as may be fixed by this Hon'ble Court.

For Petitioner : Mr.Chandrasekaran

ORDER

The revision petition on hand is filed for a direction to direct the learned Principal District Munsif, Mayiladuthurai to dispose of the I.A.No.116 of 2018 in O.S.No.59 of 2018 within a time frame to be fixed by this Court.

2.The learned counsel on behalf of the revision petitioner contended that the petitioner is the 4th defendant in O.S.No.59 of 2018. The suit was filed by the 1st respondent for a permanent injunction in respect of the suit schedule properties. An interim injunction was granted by the learned Principal District Munsif, Mayiladuthurai, on 22.03.2018.

3.The learned counsel is of an opinion that the learned Principal District Munsif is granting adjournments without assigning any valid reason in a routine manner. The revision petitioner herein has already filed written statement in the suit as well as counter affidavit in the Interlocutory Application.

4.The learned counsel appearing before the Subordinate Court is repeatedly insisting the Court to dispose of the Interlocutory Application in view of the fact that interim injunction was obtained based on certain erroneous facts placed before the Court and therefore, the matter should be heard urgently by the Subordinate Court. In spite of the request made by the learned counsel appearing on behalf of the defendants before the Subordinate Court, the Subordinate Court is granting adjournments in a routine manner, even without assigning any valid reason for granting such adjournments. Thus, the revision petitioner is constrained to move the present revision petition before this Court.

5.The present revision petition is taken up for final disposal on the ground that the relief sought for is a direction to direct the learned Principal District Munsif, Mayiladuthurai, to dispose of the Interlocutory Application filed in I.A.No.116 of 2018 in O.S.No.59 of 2018. In view of the fact that the direction sought for is general in nature and already covered under the provisions of the Code of Civil Procedure, more specifically, Order XXXIX Rule 3(A), this Court is inclined to pass the final order in this revision petition.

6.Order XXXIX Rule 3(A) enunciates that the Courts should dispose of the application for injunction within thirty days and also where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability.

7.Thus the provision is unambiguous. The Judicial Officer concerned is bound to dispose of the injunction petition within a period of 30 days from the date on which the injunction was granted. In the event of any difficulty or otherwise, the same must be recorded at the time of granting further adjournments to the parties to the suit. In the absence of any such valid reason, it is to be construed that the injunction granted cannot be continued for an

unspecified period of time.

8. The Hon'ble Supreme Court of India has clearly stated that in the case of **Asian Resurfacing of Road Agency Pvt. Ltd. and Ors. vs. Central Bureau of Investigation [AIR 2018 SC 2039]**, as follows:

"35. In view of above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this, situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized. The trial Court where order of stay

of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.

36. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 Cr.P.C. or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to re-appreciate the matter. Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day basis so that stay does not operate for an unduly long period. Though no mandatory time limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated. Mandate of

speedy justice applies to the PC Act cases as well as other cases where at trial stage proceedings are stayed by the higher court i.e. the High Court or a court below the High Court, as the case may be. In all pending matters before the High Courts or other courts relating to PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on above parameters. Same course may also be adopted by civil and criminal appellate/revisional courts under the jurisdiction of the High Courts. The trial courts may, on expiry of above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced.

37. The High Courts may also issue instructions to this effect and monitor the same so that civil or criminal proceedings do not remain pending for unduly period at the trial stage."

9. The Hon'ble Mr. Justice M.Y. Eqbal, Former Chief Justice, High Court of Madras, in his Book "Adjournments" has observed as follows :

"Adjournments are like fire in the present justice delivery system. If we sit with our back towards it, then for sure, in future

we shall be sitting on our blisters. The Holy Bible says, "*So not let evil conquer you, but overcome evil with good*".

It cannot be denied that the provision of order XVII, Rule 1 of the Code of Civil Procedure is more followed in breach than in compliance. Adjournments are sought for and granted by the Courts as a matter of course. Proceedings in the suits are not allowed to move much less concluded by one of the parties interested in delay. The spirit of providing justice expeditiously is shattered and stalled by non-observance of the provisions contained in Order XVII Rule 1 of the Code of Civil Procedure, and as a result thereof, it takes years and years before the proceedings are concluded before the trial Courts. **If delay in disposal of cases is to be curbed, the wholesome provision of Order XVII, C.P.C. has to be given the meaning it deserves.**

Order XVII Rule 1 as it originally existed in the Code of Civil Procedure, 1908 reads as under:

"(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.

(2) In every such case the Court shall fix a day of the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

*Provided that, when the **hearing of***

evidence has once begun, the hearing of the suit shall be continued form day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded."

The aforesaid Rule corresponds to Section 156 of the Civil Procedure Code, 1882 with some variation. From the perusal of the aforesaid Rule it is evidently clear that even in the Code of 1882, it was provided that where hearing of the evidence once begun in the suit, that shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

It must be borne in mind that parties cannot obtain adjournment by consent as a matter of course. It is entirely the business of the court to regulate its own procedure. The question of granting or refusing an adjournment on the ground that a party is not ready with evidence is the one essentially for the discretion of the Court, which is to be exercised judicially.

In the case of ***Sreemutty Toolsy Money V.Sreemutty Prasad Money, 2C.W.N. 490*** it was held that **order XVII** does

not apply to an adjournment, which is not made at the instance of the parties, but which is necessitated by the rules of Court, which regulate the disposition of its own business.

Where a defendant had known for some time previously that his case was coming on, and what evidence was necessary, a medical certificate to the effect that he was confined to his bed by lumbago was held to be no sufficient ground for adjournment – *vide Elias vs. Jarawar Mull, 24 W.R. 202.*

Similarly, after the settlement of issues the case was fixed for final hearing, when the plaintiff applied for summons on a witness, and asked for an adjournment, it was held that refusing adjournment and dismissing the suit justified- *vide Comalammal vs. Rangaswamy, 4 M.H.C.R. 56.*

Likewise, when a party files process-fee only two days before the hearing date, any order passed for issue of processes must be understood to have been issued at the risk of the party in fault, and adjournment should not be granted when the case comes for hearing - *vide Jagabandhu vs. Gorey, 1 P.L.J. 173.*

Interpreting the un-amended provisions of Order XVII Rule 1 of the Code of Civil Procedure the Supreme Court in the case of **Thakur Sukhpal Singh V. Thankur Kalyan Singh and another** reported in **A.I.R. 1963 S.C. 146**, held thus:

"17. ...it is a matter within the discretion of the Court to allow an adjournment and such a discretionary order is, ordinarily, not a matter for the consideration of this Court in an appeal under Article 136 of the Constitution. The petition for special leave did not mention this contention among the grounds of appeal. No special reasons exist for our entering into this contention. The order under appeal gives adequate reasons for rejecting the application for adjournment."

From the aforesaid discussion, it can safely be concluded that even prior to amendments in the Code of Civil Procedure in 1976, 1999 and 2002, the provision for adjournment has been seriously taken note of in the Codes of 1882 and 1908 **and the Courts also has given strict interpretation to the provisions for adjournment**

In the year 1976 certain amendments were made in the Code of Civil Procedure, deleting some of the existing provisions and substituting with new provisions, with the object of not only reducing the pendency, but also providing speedy trial of the Civil Suits and other proceedings. But those amendments did not give adequate results."

10. The amended provisions clearly stipulates that

1. It is not enough if a cause is shown for adjournments, but it must be a sufficient cause.
2. The number of adjournments is limited to three, the exception being the circumstances beyond the control of the party.
3. While adjourning the case, Court cannot do it indefinitely, but must fix the next date of hearing.
4. Adjournment is not automatic and the Court is bound to make the orders as to cost occasioned by the adjournments.
5. Court is also empowered to make higher cost as the Court deem fit apart from the cost occasioned by the adjournments.

11. The National Litigation Policy as well as the State Litigation Policy unambiguously states that such routine adjournments are to be averted. The litigation policies both at the national level and the state level curbs the grant of adjournments in a routine manner without assigning any reason by the Courts.

12. This being the litigation policy, as well as the spirit of the Code of Civil Procedure, this Court is of an opinion that all the Civil Courts, while dealing with the injunction petitions must be cautious and should ensure that all such petitions are dealt with by the Courts in accordance with law and dispose of the

same at the earliest possible and within the time limit stipulated under Order XXXIX Rule 3(A) of the Code of Civil Procedure. Only on extraordinary and exceptional circumstances, adjournments are to be granted and in the cases, where the parties are getting adjournments without any valid reason, heavy cost is to be imposed by the Courts considering the facts and circumstances.

13. This being the legal principles to be followed, this Court is of an opinion that the docket orders produced before this Court in the present revision petition shows that the interlocutory application was adjourned time to time as detailed below:

"22.3.18:

Petitioner side heard. Complaint documents perused. Document No.10 is the mortgage deed executed by the petitioner's father in favour of Primary Agricultural Co-operative Bank Limited, Gonerirajapuram. Document No.13 is the kist receipts paid by the petitioner's father regarding suit 'B' Schedule property. The above documents are shown the possession of the petitioner in the suit property. Irreparable loss is considered.

Prima facie case made out. Balance of convenience is in favour of petitioner. Hence this court is inclined to grant Ad-interim injunction till 06.04.2018.

Issue notice to respondents by 06.04.2018. Ad-interim

injunction till then.

To be complied order 39 Rule 3 CPC.

*E.Selvaraj
PDM. 22.3.18*

6.4.18:

Or 39 R 1 & 2 complied.

*Affidavit along with postal receipt filed by petitioner
dt: 23.3.18*

Injunction to R1 served

Injunction to R2 served.

Mr.S.Narayanan Advocate files vakalath for R1/D4

Mr.S.Sivachandran Advocate files vakalath for R2/D5

*Injunction order extension memo filed by
petitioner/plaintiff.*

Judge on C.L. reposted on 13.4.18.

13.4.18:

Injunction to R1 served

Injunction to R2 served (Hg 6.4.18)

*Mr.S.Narayanan Advocate already files vakalath for
R1/D4 dt: 6.4.18*

*Mr.S.Sivachandran Advocate already files vakalath for
R2/D5 dated: 6.4.18.*

*Injunction order extension memo already filed by
petitioner/plaintiff dt:6.4.18*

Counter of R1, R2

Memo filed by R1 & recorded.

Written statement of D4 adopted as counter of R1.

At request of R2 for 7.6.18 IOE till then.

*P.Chandrasekar
PDM.*

7.6.18:

Counter of R2 by 11.6.18 IOE till then.

*R.Sathish
PDM.*

11.6.18:

Counter of R2 by 18.6.18 IOE till then.

*R.Sathish
PDM. 11.6.18*

18.6.18:

Counter of R2 by 25.6.18 IOE till then.

*R.Sathish
PDM.*

25.6.18:

Written statement adopted as counter of R2 IOE

Enquiry by 2.7.18 IOE till then.

*R.Sathish
PDM.*

2.7.18:

Enquiry memo filed IOE till 7.7.18.

*R.Sathish
PDM. 2.7.18*

7.7.18:

Enquiry memo filed IOE till 13.7.18.

*R.Sathish
PDM.*

13.7.18:

Enquiry memo filed IOE till 23.7.18.

*R.Sathish
PDM.*

23.7.18:

Enquiry memo filed IOE till 31.7.18.

*R.Sathish
PDM. 23.7.18*

31.7.18:

Enquiry memo filed IOE till 7.8.18.

*R.Sathish
PDM. 31.7.18*

7.8.18:

Enquiry memo filed IOE till 17.8.18.

*R.Sathish
PDM. 7.8.18*

17.8.18:

Enquiry Today declared on public holiday.

Hence reposted to 5.9.18

5.9.18:

Enquiry memo filed IOE till 17.9.18.

*R.Sathish
PDM. 5.9.18*

17.9.18:

Enquiry by 24.9.18.

*R.Sathish
PDM. 17.9.18*

24.9.18:

Enquiry,

Memo filed. Injunction order extended till 5.10.18

*R.Sathish,
Principal District Munsif,
Mayiladuthurai.
24.9.18."*

14. Order XXXIX Rule 3(A), though directory in nature, the purpose, object and the spirit of the provision is to be certainly borne in mind, while dealing with the Interlocutory Applications regarding grant of injunctions. Thus, it is not, as if the spirit of Order XXXIX Rule 3(A) can given a go-by. In fact, the Rule is meant to deal with the petitions for interim injunctions and therefore, the Courts are to be cautious, while granting adjournments in a routine and mechanical manner at the request of the parties to the Civil Suit. The mere principle that Order XXXIX Rule 3(A) is not mandatory and only directory, can never be construed as grant of sanction to violate the said provision. Any violations of the Code of Civil Procedures are also to be viewed seriously and the adjournments granted without recording any justifiable reason, can also to be looked into. In other

words, adhering to the Code of Civil Procedure is the rule and non-adherence of the time limit prescribed in the Code of Civil Procedure in certain provisions are only exceptions. Thus, the exceptions can never be made as a rule. Adjournments can never be pleaded or granted as a rule. It is to be granted only on exceptional circumstances based on some justifiable reasons. The Courts are bound to consider the intention of the parties, while seeking adjournments.

15. The intention of the parties in recent days, are certainly for the purpose of prolonging and protracting the issues, so as to gain some unlawful enrichments. Adjournments are frequently sought for either for the purpose of Court / Bench Hunting or to harass the opposite party or to keep the matter pending for long years and to achieve their goals through other methods. Thus, the Courts are bound to weigh the facts and circumstances for the purpose of granting adjournments. If the intention of the parties are to prolong and protract the issues, then the Court must be declined to grant adjournment, more specifically, in Interlocutory Applications.

16. Few Legal brains and ill-natured litigants are tempted to adopt such delay tactics by finding out certain loopholes in the judicial system. However, the Courts cannot encourage such adjournments sought for by the litigants. Substantial justice to the genuine litigants are denied on account of grant of such

frequent and unnecessary adjournments at the instance of one of the parties to the case. The adjournments are granted without any application of mind by the Courts in some occasions. Thus, the judicious applicability of mind and justifiability of granting Adjournments are the mandatory requirements for the grant of adjournments. If such legal principles are not followed by the Courts, then certainly the ill-minded and ill-natured litigants will attempt to take undue advantage of the delay in judicial system and deprive the genuine litigants to get substantial justice from the Court of law. Under these circumstances, this Court is of an opinion that leniency can never be a point for grant of adjournments. Misplaced sympathy is certainly barred. All such adjournments are to be granted only on justifiable grounds and by considering the facts and circumstances of each case.

17. On a perusal of entire docket orders, this Court is of an opinion that, adjournments were granted frequently and without recording any reason. Under these circumstances this Court is inclined to pass the following orders.

(i) The learned Principal District Munsif, Mayiladuthurai, is directed to dispose of the interlocutory application filed in I.A.No.116 of 2018 in O.S.No.59 of 2018 within a period of 3 weeks from the date of receipt of a copy of this order.

(ii) The Civil Courts across the State of Tamil Nadu and Puduchery are

also directed to strictly adhere the legal principles enumerated in this order in respect of disposing of the interlocutory applications, more specifically, the injunction petitions, with reference to Order XXXIX Rule 3(A) of the Code of Civil Procedure.

(iii) The Registry, High Court of Madras, is directed to communicate this order to all the Civil Courts across the State of Tamil Nadu and Puducherry.

(iv) The Registry, High Court of Madras, is directed to communicate the copy of this order to the Registrar General, High Court, Madras.

18. With the above directions, this Civil Revision Petition is allowed. No costs.

Note : Registry is directed to issue copy of this order by 12.11.2018

08.11.2018

mkn/ssr/kak

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

To

1. The Principal District Munsif,
Mayiladuthurai.
2. The Registrar General,
High Court, Madras.

S.M.SUBRAMANIAM, J.

mkn/ssr/kak



C.R.P.(PD).No.3429 of 2018

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