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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.2440 of 2017 (O&M)

Date of Decision : 06.02.2018

Vinay Bhushan Jhamb and others

..... Appellants

Versus

Pritam Singh (deceased) through LR's.

.... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Akshay Bhan, Sr. Advocate
with Mr. Santosh Sharma, Advocate
for the appellants.

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the judgments of the courts below dismissing a suit for specific performance filed by the appellants.

The case set up by the appellants was that they had entered into an agreement dated 14.12.2007 to purchase the property of the respondents measuring 915 sq. yards @ Rs.15,800/- per sq. yard. As per this agreement to sell the total sale consideration was in the amount of about Rs.1,44,00,000/- odd (Rupees One Crore & Forty Four Lacs Odd). As per the agreement to sell the date fixed for execution of the sale deed was 15.04.2008. At the time of the agreement to sell the appellants had paid an amount of Rs.15 lacs and later another amount of Rs.10 lacs was paid to the

was extended to 26.04.2008 and in fact the appellants got an endorsement to this effect typed on the agreement to sell but the respondent did not turn up to sign the said extension endorsement. As per the appellants, on 26.04.2008 the respondent again kept dilly-dallying the matter and stated that he would in fact execute the sale deed on 28.04.2008 and when the respondent did not appear on 28.04.2008 the instant suit was filed. The case of the respondent on the other hand was that he had executed the agreement to sell in favour of the appellants but the appellants were not ready and willing to execute the sale deed and in fact the respondent had appeared before the Sub-Registrar and remained present through out the day on the date fixed i.e. 15.04.2008 and got his presence marked. Issues were struck on 08.03.2010 and the matter was fixed for 22.07.2010 for evidence of the appellants. Thereafter the matter was fixed for 08.11.2010, 27.01.2011, 09.04.2011, 09.08.2011, 13.10.2011 and 16.01.2012 but no evidence was led by the appellants. On 16.01.2012 again the adjournment was sought which was allowed subject to costs of Rs.500/- and the case was fixed for 28.03.2012 for the entire evidence. It transpired that on 28.03.2012 there was a Punjab Bandh and the matter was adjourned to 11.05.2012 on which date one witness appeared and filed his affidavit and the matter was adjourned to 04.09.2012 for cross-examination and for the remaining evidence. During this time the appellants had also filed an application for examining the hand-writing expert which came up on 16.08.2012 and was adjourned to 24.08.2012. On 24.08.2012 the application was adjourned to 03.10.2012. Meanwhile on 04.09.2012 two witnesses appeared and submitted their affidavits in chief and thereafter on 03.10.2012 PW-2 was

matter was adjourned to 05.10.2012 and on that date the matter was adjourned to 16.10.2012. On 09.10.2012 the case was taken up and adjourned to 22.11.2012 since the Judge was on leave on 16.10.2012. On 22.11.2012 an application was filed for impleading the LR's. Somehow the leading of evidence was then derailed and the matter kept pending for consideration on the applications for examination of hand-writing expert as well as for impleading the LR's. On 26.07.2013 the application for impleading the LR's was allowed and the matter was adjourned from time to time. The matter kept pending for more than a year but ultimately by an order dated 10.11.2014 the application for examining hand-writing expert was allowed and the matter was adjourned to 19.11.2014 for the remaining evidence of the appellants. On 19.11.2014 neither any evidence was examined nor his counsel appeared. The matter was adjourned to 25.11.2014. Even on that date neither the appellants nor his counsel appeared and the matter was adjourned to 28.11.2014. On 28.11.2014 the counsel appeared and again sought time. It was on that date the court dismissed the suit under Order 17 Rule 3 CPC. Appeal was filed in which it was prayed that one opportunity be granted to the appellants. The appellate court having dismissed the appeal the appellants are before this Court.

Learned Senior Counsel for the appellants states that he does accept that there was negligence on the part of the counsel and the appellants but states that this is a case where the appellants have entered into an agreement to purchase which has been accepted and have paid a huge amount of Rs.25 lacs and that procedural rules being handmaid of

justice, the appellants should be allowed one more opportunity to lead

evidence and for that the respondent can be compensated with costs. The appellate court has relied upon the various judgments of this Court where this Court has upheld the orders where the cases were dismissed under Order 17 Rule 3 CPC when the appellants in that cases did not lead their evidence. Reference may be made to ***Ram Phal and another vs. Rangoli Builtech Pvt. Ltd. and another, 2008(4) RCR (Civil) 350, Gurdev Singh vs. PSEB and another, 2006(2) RCR (Civil) 158 (P&H), Chander Prakash Ojha vs. District Judge, Bareilly and another, 2004(3) RCR (Civil) 845.*** The appellate court further relied upon the judgment of the Supreme Court in the matter ***M/s Shiv Cotex vs. Trigun Auto Plast Pvt. Ltd. and another, 2011(4) RCR (Civil) 807*** and came to the conclusion that the appellants did not deserve the benefit of more opportunity.

Learned Senior Counsel for the appellants has relied upon the judgment of this Court in the matter of ***Om Parkash vs. Thana Ram and others, 2011(2) CCC 060 (P&H)*** to contend that in that case this Court has set aside the similar order. However, I find that the facts in that case are starkly different. This Court had found that a total of 8 opportunities had been granted to that appellant and during that time the case was transferred from one court to the another. This Court had also found that no costs was ever imposed upon the appellant and no last opportunity was ever granted to the appellant in that case. This Court had also found that in that case the respondents also had filed a counter claim and even while dismissing the suit of that appellant the matter had been adjourned for evidence in the counter-claim. It was in those circumstances that this Court had interfered and allowed the opportunity to the appellant.

the judgment in Ram Phal case (supra) where this Court had rejected such plea in a case where the plaintiff had been granted number of opportunities including three last opportunities. Further I find that the judgment of the Supreme Court in Shiv Cotex case (supra) is also applicable to the facts of the present case where in para Nos.15 & 16 it has been held as follows:-

“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.”

Consequently, I regret my inability to take a different view.

Appeal is dismissed. No costs.

Since the main case has been decided, the pending Civil Misc.

Application, if any, also stands disposed of.

February 06, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No