

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 43 of 2006**

1. Aganiya Bai, Wd/o Leela Das, Aged about 55 years,
2. Sadh Bai, D/o Leela Das, Aged about 32 years,
3. Savitri Bai, D/o Leela Das, Aged about 28 years,
4. Chote Bai, D/o Leela Das, Aged about 24 years,
5. Chote Lal, S/o Leela Das, Aged about 22 years,
6. Santoshi, D/o Leela Das,

Appellants No. 5 & 6 are minors through natural guardian mother Aganiya Bai, Wd/o Leela Bai.

All caste Satnami, R/o Vill. Singarpur, Teh. Bhatapara, District Raipur (C.G.)

---- Appellants/plaintiffs

Versus

1. Ganga Ram, S/o Bhola Satnami, Aged about 35 years, Occupation - Kastkar, R/o Mouza Singarpur, Tahsil – Bhatapara, Distt: Raipur (C.G.)
2. State of Chhattisgarh Through Collector Raipur – (C.G.)

---- Respondent/defendant

For Appellants/plaintiffs	: Mr. A.S. Rajput, Advocate.
For Respondent No. 1	: Mr. H.B. Agrawal, Senior Advocate assisted by Mrs. Prabha Sharma, Advocate
For Respondent No. 2/State	: Mr. Akash Pandey, PL

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/07/2019

(1) The substantial questions of law involved, formulated and to be answered in this plaintiff's second appeal state as under:

“Whether on the facts and in the circumstances of the case, the trial Court was not justified in refusing the fourth adjournment under Order 17 Rule 1 of the CPC and the judgment and decree passed by the trial Court and confirmed by the First Appellate Court vitiate on this count ?

(For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court).

(2) The plaintiffs instituted a suit for declaration of title, permanent injunction and possession stating inter alia that they are title holder of the scheduled suit property. On behalf of the plaintiffs, affidavit under Order 18 Rule 4 of the CPC of Sadh Bai & Mohar Das was filed and they were present before the trial Court 22.10.2003 for their examination, but they could not be cross-examined on that day as the court's time was over. On the next date of hearing, one witness namely Mohar Sai was present but again, he could not be cross-examined. When they appeared before the trial Court on 15.3.2004, the Presiding Officer was on leave, therefore, they could not be cross-examined and again on 8.9.2004 they were present before the trial Court but they could not be cross-examined as the Court's time was over and ultimately when the case was fixed for evidence on 4.1.2005, the plaintiffs' witness namely Sadhbai & Mohar Sai could not appear due to their illness on that day and when the counsel for the plaintiff sought adjournment, it was rejected by the trial Court as the medical certificate in support of their illness was not filed and closed plaintiff's opportunity to lead evidence and suit was also dismissed on the same date i.e. 4.1.2005 for want of evidence.

(3) The plaintiffs preferred first appeal thereagainst. The first appellate Court, after

re-appreciation of the oral & documentary evidence, dismissed the appeal and now this second appeal under Section 100 of the CPC has been preferred by the appellants/plaintiffs, in which, substantial question of law has been formulated, which has been set-out in the opening paragraph of this judgment.

(4) Learned counsel appearing for the appellant/plaintiff would submit that the trial Court is absolutely unjustified in rejecting the plaintiff's request for adjourning the matter as sufficient case was shown by the plaintiff for adjourning the matter on 4.1.2005 and thereby committed illegality in dismissing the suit for want of evidence. He would further submit that the first appellate Court has also committed illegality in affirming the order/judgment of the trial Court.

(5) Learned Senior Counsel appearing for respondent No. 1 would support the impugned order/judgment.

(6) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(7) The question that falls for consideration is whether earlier adjournments, if any, granted by the court should be taken into consideration by the Court while examining the sufficiency of cause in an application under Order 17 Rule 1 of the CPC on the subsequent occasion.

(8) The Supreme Court in case of **State Bank of India Vs. Chandra Govindji (KM.)**¹ has considered and held as under :-

“7. In ascertaining whether a party had reasonable opportunity to put forward his case or not, one should not

1 (2000) 8 SCC 532

ordinarily go beyond the date on which adjournment is sought for. The earlier adjournment, if any, granted would certainly be for reasonable grounds and that aspect need not be once again examined if on the date on which adjournment is sought for the party concerned has a reasonable ground. The mere fact that in the past adjournments had been sought for would not be of any materiality. If the adjournment had been sought for on flimsy grounds the same would have been rejected. Therefore, in our view, the High Court as well as the learned District Judge and the Rent Controller have all missed the essence of the matter.”

(9) Likewise, the Supreme Court in case of **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India**² has held as under:-

“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 (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 does not forbid grant of adjournment where the circumstances are beyond the control of the party. In such a case, there is not restriction on number of adjournments to be granted. It can not be said that even if the circumstances are beyond the control of the 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 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, which reference to peculiar facts of a case. We say, 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 extraordinary 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.”

(10) Reverting to the facts of the case in light of the principles of law laid down by the Supreme Court in the above referred cases (*supra*) *qua* Order 17 Rule 1 of the CPC, it is quite vivid that on behalf of the plaintiffs, an affidavit under Order 18 Rule 4 of the CPC of Sadhbai & Moharsai was filed on 22.10.2003 and they were present also but as the court's time was over, they were discharged and again one of the witnesses namely Mohar Sai was present but again he could not be examined and on 15.03.2004 when they were present, the Presiding Officer was on leave, therefore, they could not be examined and when on 8.9.2004 again for want of time, they could not be examined. When they fell sick, they could not appear on 4.1.2005, plaintiffs' opportunity to lead evidence was closed and the suit was dismissed for want of evidence by the trial Court on the same date i.e. 4.1.2005. In my considered opinion, the trial Court was absolutely unjustified in refusing adjournment and rejecting the prayer for adjournment as the plaintiffs have already taken prompt steps by filing affidavit under Order 18 Rule 4 of the CPC and thrice their witnesses appeared before the trial Court for recording their evidence, but for want of time of the court, they could not be cross-examined. The trial has committed illegality in dismissing the suit, which was perpetuated by the first appellate Court by affirming the judgment & decree of the trial Court. Thus, the judgment and decree passed by both the courts below are set aside as finding of fact recorded are perverse. Substantial question of law is answered accordingly.

(11) It is well settled that if the concurrent finding recorded by both the courts below are perverse, this Court in exercise of its jurisdiction under Section 100 of CPC can interfere with the said finding of fact so arrived.

(12) Resultantly, the order/judgment dated 04.01.2005 passed by the trial Court in Civil Suit No. 106-A/2001 as well as impugned judgment & decree passed in Civil Appeal No. 4-A/2005 are set aside. Civil Suit No. 106-A/93 (Mus. Aganiya Bai & others Vs. Gangaram & another) is restored to the original file of the said Court of hearing and disposal on merits in accordance with law.

(13) The appeal is allowed to the extent indicated hereinabove.

(14) Decree be drawn up accordingly.

(15) No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

