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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 9th August, 2019

+ **CM(M) 1188/2019**

GUNMALA JAIN & ORS Petitioners

Through: Mr.K.Sunil, Advocate

versus

PUNAM JAIN & ANR Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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CM APPL. 35836/2019

Exemption allowed, subject to all just exceptions.

The application is disposed of.

CM(M) 1188/2019 & CM APPL. 35835/2019

1. The present petition under Article 227 of the Constitution of India is directed against an order dated 29.05.2019, passed by the Civil Judge (Central), Tis Hazari Court, Delhi in Civil Suit No.99361/2016, whereby the Trial Court has dismissed the application of the petitioners herein [defendant Nos. 1 to 4 in the suit] for permission to cross-examine two witnesses of the plaintiffs/respondents.

2. The witnesses in question were examined by the plaintiffs/respondents as PW-2 & PW-3. The order sheets of the Trial Court record that cross-examination of PW-1 was completed on 11.07.2017 and the matter was listed for remaining evidence on behalf of the plaintiffs on 21.11.2017. On that date, the cross-examination of

PW-2 was deferred at the request of learned counsel for the defendants. PW-3 was discharged as he had not brought the summoned records. On the next date of hearing, i.e., 16.01.2018, PW-2 & PW-3 were examined in-chief but their cross-examination was deferred at the request of proxy counsel for the defendants. The examination-in-chief of PW-4 commenced on that date, but remained inconclusive. The order of the Trial Court dated 16.01.2018 recorded that the defendants were given “last opportunity to examine PW-2 and PW-3” on 10.04.2018. However, the Bar was on strike on that date and the matter was, therefore, deferred to 10.07.2018. On 10.07.2018, the matter was passed over once, awaiting the counsel for the defendants. As the counsel for the defendants was not available, even on second call, the witnesses were discharged and the right of the defendants to cross-examine PW-2 & PW-3 stood closed. The examination-in-chief of PW-4 was concluded but cross-examination of PW-4 was deferred at the request of the proxy counsel for the defendants. The defendants applied for leave of the Court to cross-examine PW-2 and PW-3, which was allowed on 30.01.2019, with no objection from the plaintiffs.

3. The order dated 30.01.2019 is reproduced below:

“30.01.2019

*Present: Sh.Sachin Aggarwal and Sh.B.K.Kholi, Ld.
counsels for plaintiff.
Defendant no.2 in person.*

*Today, reply filed by the plaintiff to the
application U/S 151 CPC of defendant no. 1 to 4.*

*After some hearing, counsel submits that he
has no objection if the aforesaid application is
allowed, subject to cost.*

In view of the above and considering that a valuable right of the defendants would be lost if they are not allowed to cross examine PW2 and PW3, the present application is allowed and defendants are given last and final opportunity to cross examine PW2 and PW3 on NDOH, subject to payment of cost of Rs.6000/- to be paid to the plaintiff on NDOH.

Defendants are informed that cross examination of PW2 and PW3 will be concluded on NDOH and no further opportunity shall be given for the same.

Let summons be issued to PW2 and PW3 on filing of PF/RC by the defendants, returnable for NDOH.

Put up for payment of cost and PE on 19.03.2019.”

[Emphasis supplied]

4. The matter was next taken up on 19.03.2019 when it was recorded that steps were not taken by the defendants to summon PW-2 & PW-3, as a reason of which the witnesses were not present. The Court, therefore, closed the opportunity of the defendants/petitioners to cross-examine PW-2 & PW-3 and put the matter up for cross-examination of PW-4 for 29.05.2019.

5. On that date, the application under consideration was filed on behalf of the defendants/petitioners to once again reopen the cross-examination of PW-2 and PW-3. The ground on which this application was filed was that the counsel for the defendants was not aware that PW-2 and PW-3, who were the witnesses of the plaintiffs, had to be summoned by the defendants and therefore did not take steps accordingly. The Trial Court rejected this contention in view of the order dated 30.01.2019 extracted above and dismissed the petition.

6. Having heard learned counsel for the petitioners, I do not consider this to be a fit case for exercise of this Court's supervisory jurisdiction under Article 227 of the Constitution of India. The facts recorded above do not disclose any unreasonableness or procedural irregularity in the course adopted by the Trial Court. The record, in fact, discloses that the defendants were granted repeated indulgences for cross-examination of the said witnesses. Even though, by an order dated 16.01.2018, they were given a "last opportunity" to cross examine the witnesses, and their right to cross-examine was first closed by order dated 10.07.2018, that was in fact reopened on 30.01.2019. The order of 30.01.2019 admits of no ambiguity. The Trial Court considered that the defendants would lose a valuable right to cross-examine the witnesses in the event they were not granted another opportunity to do so. It records that an opportunity be granted, subject to payment of costs, so once again, the "last and final opportunity" to cross examine the witness was granted. The said observation is reiterated, and the obligation of the defendants to file process fee and registered cover is also express.

7. The ground taken in the application under consideration is that the witnesses being the witnesses of the plaintiffs, the defendants did not realize that they were obliged to submit the process fee and registered cover cannot be countenanced, in view of the express direction contained in the order dated 30.01.2019. When a party is granted an indulgence by the Court, the least that is expected is that the conditions upon which such indulgence is granted, will be carefully examined and complied with. The failure to do so has visited consequences upon the defendants/petitioners for which neither

the Court nor the plaintiffs/respondents can be blamed. In the circumstances, the order dated 19.03.2019 declining any further opportunity to the defendants was neither unreasonable nor unduly harsh.

8. Learned counsel for the petitioners has cited four judgments in support of the case made out herein. The judgment in *Rupendra Deb Raikut vs. Ashrumati Debi & Ors.* AIR 1951 Calcutta 286 emphasised that the interest of substantive justice should overcome procedural irregularities. Learned counsel drew my attention to paragraph 63 of the said judgment, which reads as follows:

“63. The learned Judge said, “there should be a dead line to filing of documents and affidavits in such a matter.” But I should think that this dead line is not as strong as death. It is here that the Court is called upon to use its discretion. As a general rule, evidence should never be shut out. Opportunity should always be given to the parties to give evidence, if the justice of the case requires it. It does not matter if the original omission to give evidence arose from negligence or carelessness. However negligent or careless may have been the first omission and however late the proposed evidence, it should be allowed if that can be done without injustice to the other side. There is no injustice if the other side can be compensated by cost. But if the other side by the production of such evidence is seriously prejudiced which cannot be remedied, the Court shall exercise the discretion.”

In my view, these observations of the Calcutta High Court are not applicable to the facts of the present case, as sufficient opportunities were in fact given to the defendants to cross-examine the witnesses in question. This is not a case of a single default which has led to harsh consequences, but of a chain of events which demonstrates lack of

diligence on the part of the defendants/petitioners.

9. In the judgment of the Andhra Pradesh High Court in *Sultan Saleh Bin Omer vs. Vijayachand Sirimal* AIR 1966 AP 295, it is clear that each case of this nature must proceed on its own facts. The facts of that case, in the opinion of the Court, warranted the indulgence being shown to the defaulted party. The facts of the present case are not similar. Similarly the judgment of Karnatka High Court in *Dr.Hema Haranha & Anr vs. Sri A.Mariyappa* [W.P.(C) 56302-56303/2014, decided on 30.01.2015] does not lay down any proposition of law on the basis of which the Court granted a further opportunity to the petitioner in that case. It cannot be read to say that a party is entitled to any number of opportunities for the same purpose.

10. Finally, learned counsel for the petitioners cited the decision of the Supreme Court in *Rafiq & Anr. vs. Munshilal & Anr.* (1981) 2 SCC 788 wherein the Court has emphasized that a litigant ought not to be penalized for the default of his chosen advocate. The question considered by the Court in that case was whether the party should suffer for the inaction, deliberate omission or misdemeanor of his agent and it was held that he should not. The judgment in *Rafiq* (supra) has been explained by the Supreme Court in *Salil Dutta vs. T.M. And M.C. Private Ltd.* (1993) 2 SCC 185, in the following terms:

“8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of

the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq [(1981) 2 SCC 788 : AIR 1981 SC 1400] must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition....”

[Emphasis supplied]

It is clear from the above that *Rafiq* (supra) does not lay down an absolute proposition, but each case of this nature must turn on its own facts.

11. In the present case, as mentioned above, several opportunities were granted to the defendants. Further, later judgments of the Supreme Court have emphasized the requirement of expeditious disposal in accordance with the procedures of the CPC and that the grant of repeated adjournments and indulgences to a party is unwarranted. In *Noor Mohammed vs. Jethanand And Anr.* (2013) 5 SCC 202, the Court has expressed its anguish at repeated delays in civil litigation:

“12. The proceedings in the second appeal before the High Court, if we allow ourselves to say so, epitomises the corrosive effect that adjournments can have on a litigation and how a lis can get entangled in the tentacles of an octopus. The philosophy of justice, the role of a lawyer and the court, the obligation of a litigant and all legislative commands, the nobility of the Bench and the Bar, the ability and efficiency of all concerned and ultimately the divinity of law are likely to make way for apathy and indifference when delay of the present nature takes place, for procrastination on the part of anyone destroys the values of life and creates a catastrophic turbulence in the sanctity of law. The virtues of

adjudication cannot be allowed to be paralysed by adjournments and non-demonstration of due diligence to deal with the matter. One cannot be oblivious to the feeling necessities of the time. No one can afford to sit in an ivory tower. Neither a Judge nor a lawyer can ignore “the total push and pressure of the cosmos”. It is devastating to expect infinite patience. Change of attitude is the warrant and command of the day. We may recall with profit what Justice Cardozo had said:

“It is true, I think, today in every department of the law that the social value of a rule has become a test of growing power and importance.” [Benjamin N. Cardozo, The Nature of Judicial Process (Cosimo Inc., 2009) 73]

13. It has to be kept in mind that the time of leisure has to be given a decent burial. The sooner it takes place, the better it is. It is the obligation of the present generation to march with the time and remind oneself every moment that the rule of law is the centripodal concern and delay in delineation and disposal of cases injects an artificial virus and becomes a vitiating element. The unfortunate characteristics of endemic delays have to be avoided at any cost. One has to bear in mind that this is the day, this is the hour and this is the moment, when all soldiers of law fight from the path. One has to remind oneself of the great saying, “Awake, Arise, ‘O’ Partha”.

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28. In a democratic set-up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly. Fragmentation of faith has the effect-potentiality to bring in a state of cataclysm where justice may become a casualty. A litigant expects a reasoned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the altar of reasons. 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. This right can be fully ripened by the requisite commitment of all concerned with the system. It cannot be regarded as a facet of Utopianism because such a thought is likely to make the right a mirage losing the centrality of purpose. Therefore, whoever has a role to play in the justice-dispensation system cannot be allowed to remotely conceive of a casual approach.

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33. In the case at hand, as we perceive, the learned counsel sought adjournment after adjournment in a non-chalant manner and the same were granted in a routine fashion. It is the duty of the counsel as the officer of the court to assist the court in a properly prepared manner and not to seek unnecessary adjournments. Getting an adjournment is neither an art nor science. It has never been appreciated by the courts. All who are involved in the justice-dispensation system, which includes the Judges, the lawyers, the judicial officers who work in courts, the law officers of the State, the Registry and the litigants, have to show dedicated diligence so that a controversy is put to rest. Shifting the blame is not the cure. Acceptance of responsibility and dealing with it like a captain in the frontier is the necessity of the time. It is worthy to state that diligence brings satisfaction. There has to be strong resolve in the mind to carry out the responsibility with devotion. A time has come when all concerned are required to abandon idleness and arouse oneself and see to it that the syndrome of delay does not erode the concept of dispensation of expeditious justice which is the constitutional command. Sagacious acceptance of the deviation and necessitous steps taken for the redressal of the same would be a bright lamp which would gradually become a laser beam. This is the expectation of the collective, and the said expectation has

to become a reality. Expectations are not to remain at the stage of hope. They have to be metamorphosed to actuality. Long back, Francis Bacon, in his aphoristic style, had said, “Hope is good breakfast, but it is bad supper.” [Ed.: Apophthegm No. 36 contained in Francis Bacon: Resuscitatio, 2nd Edn. (1661); see also Spedding, J. (Ed.), The Works of Francis Bacon, Vol. 7 (1859)] We say no more on this score.”

The Court relied upon its earlier judgment in *Shiv Cotex vs. Tirgun Auto Plast Private Limited And Ors.* (2011) 9 SCC 678, wherein it was held:

“15. 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 proactive 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 realise that adjournments do dent the efficacy of the 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.

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17. 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.”

These judgments have been followed subsequently in *Gayathri vs. M. Girish* (2016) 14 SCC 142.

12. The facts of the present case, and the circumstances mentioned above, do not warrant any interference with the order of the Trial Court. There is no error of jurisdiction or perversity in consideration of the facts which entitles the petitioners to invoke the jurisdiction of this Court under Article 227 of the Constitution of India.

13. The petition, is therefore, dismissed.

PRATEEK JALAN, J

AUGUST 09, 2019

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