



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

% **Date of order: 4th September, 2023**

+ C.R.P. 197/2023, CM APPL. 37723/2023, 37724/2023, 37725/2023
& 37726/2023

RAJINDER KUMAR Petitioner
Through: Mr. _____ (Appearance not given)

versus

KRISHAN LAL AHUJA & ORS. Respondents
Through: Ms. Hrishika Pandit, Advocate for R-
1 and 2.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 37724/2023 and 37725/2023 (condonation of delay)

1. The instant applications have been filed under Section 5 of the Limitation Act, 1963, read with Section 151 of the Code of Civil Procedure, 1908, on behalf of the petitioner seeking condonation of delay in the filing and re-filing of the revision petition challenging the impugned order dated 2nd January 2023.

2. There is a delay of 62 days in filing and 22 days in re-filing the petition under Section 115 of the Code of Civil Procedure, 1908.

3. For the reasons stated in the applications, the applications are allowed and the delay in filing and re-filing the revision petition is condoned.



4. The applications stand disposed of.

C.R.P. 197/2023 and CM APPL. Nos. 37723/2023, 37725/2023 & 37726/2023

1. The present revision petition has been filed on behalf of the petitioner under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter “CPC”), seeking the following reliefs:

“(i) Set-aside the order dated 02.01.2023 and opportunity for complete cross examination of petitioner as DW-1 may be granted.

(ii) To direct the court below to provide the opportunity to the defendant No. 1 to complete his evidence as DW-1 and any more if the petitioner seeks to do so.

(iii) And pass any such order/orders as the court may deem fit and proper, in the light the given circumstances, thus render justice. In the interest of justice.”

2. The respondent Nos. 1 and 2 (plaintiffs before the learned Trial Court) had filed a suit for specific performance, declaration and permanent injunction against the petitioner and respondent Nos. 3 to 5 (defendants before the learned Trial Court), on 4th July 2015. In the said suit, the respondents have sought the above said reliefs towards the “built-up ground floor portion of the property bearing No. 17/1, Gali No. 16, Manav Kunj, Mukundpur Extn. 11, Delhi – 110042, forming part of Khasra No.228/1/1, land/property admeasuring 80 sq. yds.”. As per the respondents, the above said property was allegedly purchased by them *vide* an Agreement to Sell dated 5th July 2012.

3. The above said Suit was registered *vide* Civil Suit bearing No. 59145/2016, and is pending trial before the learned ADJ-03, North, Rohini



Courts, Delhi. The plaintiff's evidence was concluded *vide* order dated 29th September 2018, and the matter was fixed for defendant's evidence. Meanwhile, the matter got adjourned on several occasions on various pretexts, for the purpose of cross examination of DW-1. Thereafter, the learned Trial Court *vide* order dated 2nd January 2023, closed the defendant's right to lead defendant's evidence.

4. The petitioner has approached this Court seeking revision of the impugned order dated 2nd January 2023, passed by the learned Trial Court in the above said Civil Suit.

5. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court passed the impugned order dated 2nd January 2023, without considering the entirety of the facts and circumstances of the instant matter.

6. It is submitted that the learned Trial Court while passing the impugned order had closed the right of the defendant (petitioner herein) to lead the defendant's evidence, due to which the petitioner is now rendered remediless to prove his defence against the false case instituted by the plaintiffs, i.e., respondent Nos. 1 and 2.

7. It is submitted that the suit filed by the respondent Nos. 1 and 2 is based on some alleged oral agreement and the same is a story concocted by the respondent Nos. 1 and 2 to harass the petitioner.

8. It is submitted that no defence evidence could be conducted between the periods starting from 12th April 2021, till 21st October 2021, due to the then prevailing pandemic, i.e., COVID-19, and the learned Trial Court had adjourned the matter on various occasions in pursuance to the directions of



this Court.

9. It is further submitted that on 21st October 2021, since the file of the case was assigned from the predecessor Court to the successor Court of Ms. Shivali Bansal, learned ADJ-03, North, Rohini Courts, Delhi, thus the learned Trial Court adjourned the matter to 11th May 2022, for the purpose of defendant's evidence.

10. It is submitted that *vide* order dated 11th May 2022, cost was imposed on the petitioner and the learned Trial Court granted last and final opportunity to conclude the defence evidence and the matter was adjourned for the date 9th September 2022. On 9th September 2022, the costs were paid to the respondents and the matter was further adjourned to 2nd January 2023.

11. It is submitted that the petitioner could not attend to the Court proceedings for the defence evidence on 2nd January 2023, as unfortunately on 29th December 2022, the petitioner sustained some injuries in consequent to which an FIR bearing No. 0921/2022, under Section 308 of the Indian Penal Code, 1860, was registered at PS – Samipur Badli. It is also submitted that due to the said reason the petitioner was in poor health condition and therefore, was on the bed rest at the advice of his doctor.

12. It is further submitted that, since the petitioner remained absent on the date 2nd January 2023, which was fixed for conducting the defendant's evidence, the learned Court below had closed the right of the petitioner to lead defendant's evidence.

13. It is submitted that the petitioner had filed an application under Section 151 of the CPC, before the learned Trial Court, thereby, seeking



recall of the order dated 2nd January 2023, along with an application seeking condonation of delay in filing the said application but the same was withdrawn by the counsel for the petitioner on 26th April 2023.

14. It is submitted that the petitioner, being aggrieved by the above said decision of the learned Trial Court, filed an application before the District Judge, Rohini Courts, thereby, seeking transfer of the said Suit to another Court, but the same was dismissed *vide* order dated 22nd May 2023, and the matter was fixed for final arguments.

15. It is further submitted that the petitioner be granted an opportunity to lead the defendant's evidence as there exist substantial points which are necessary for the proper adjudication of the Suit.

16. It is submitted that the learned Trial Court failed to appreciate the fact that by passing the impugned order, a great prejudice is being caused to the petitioner, whereby, the petitioner is being denied the right to lead his defence on merits and the same is in violation of the principle of '*audi alterum partem*'.

17. It is submitted that for imparting justice, the evidences of both the parties to a dispute is necessary for proper adjudication but the learned Trial Court by way of the impugned order has acted in contravention to the settled principles of natural justice.

18. It is submitted that in view of the foregoing submissions, the petitioner's prayer seeking setting aside of the impugned order dated 2nd January 2023, may be allowed and the instant petition be decided in his favour.

19. *Per Contra* learned counsel appearing on behalf of the respondent



Nos. 1 and 2 vehemently opposed the instant petition and submitted that the same has been filed to abuse the process of law and derail the proceedings before the learned Trial Court. It is submitted that the instant petition being devoid of any merits is liable to be dismissed.

20. Heard learned counsel for the parties and perused the record.

21. The petitioner has approached this Court by way of the instant revision petition, thereby, challenging the impugned order dated 2nd January 2023, whereby, the right of the petitioner to lead defendant's evidence was closed by the learned Trial Court.

22. It is the case of the petitioner that on 2nd January 2023, the matter was fixed for cross examination of DW-1 and since the petitioner was on bed rest, he could not attend the Court proceedings and hence, the learned Trial Court closed the opportunity of the petitioner to lead the defendant's evidence, i.e., DW-1, by passing the impugned order. The relevant paragraphs of the impugned order are reproduced below:

“.. AT 11:02 AM

...

None for the defendant.

Be awaited.

AT 12:21 PM

..None for the defendant.

Be awaited.

AT 01:03 PM

Since none has appeared for and on behalf of the defendant despite repeated calls, the right of the defendant to



lead evidence of DW-1 is hereby closed and the part evidence of DW-1 shall not be read.

On perusal of list of witnesses filed on behalf of defendant, it is found that only DW-1 was to be examined as a witness. Accordingly, the right of the defendant to lead DE is hereby also closed...”

23. Upon perusal of the above said order passed by the learned Trial Court, it is observed that the learned Court below was of the view that despite repeated calls, none had appeared on behalf of the petitioner. Further, the previous orders as annexed with the present petition show that the learned Court below had adjourned the matter to 2nd January 2023, stating it to be the last and final opportunity for the petitioner to lead the defendant's evidence.

24. The instant matter involves a very peculiar issue with regard to the unnecessary delay and adjournments in a proceeding before the Trial Court. This Court will examine the same by discussing the law settled by the Hon'ble Supreme Court.

25. The relevant provision of the law which is applicable in the instant petition is Order XVII Rule 1 of the CPC. The said provision talks about the concept of adjournment as enunciated in the CPC and the same has been reproduced herein for reference:

“ORDER XVII – Adjournment

1. Court may grant time and adjourn hearing.—¹[(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 for reasons to be recorded in writing:

Provided that no such adjournment shall be granted



more than three time to a party during hearing of the suit.]”

26. The Hon’ble Supreme Court in ***Shiv Cotex v. Tirgun Auto Plast (P) Ltd., (2011) 9 SCC 678***, enunciated the principle with regard to the litigants seeking unnecessary adjournments and its effect on the judicial process. It observed as follows:

“14. 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 19-7-2006, 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? 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.”

27. It is observed that seeking adjournments for postponing the examination of witnesses is not in the best interest of imparting justice to either party to a dispute. A party to the suit is not at liberty to proceed with the trial as its leisure and pleasure, and has no right to determine when the evidence would be let in by it or when the matter should be heard. The parties to a suit – whether the plaintiff or the defendant – must cooperate with the Court to ensure that effective work is carried out on the date fixed for hearing. If they don't, they do so at their own peril.

28. The Hon'ble Supreme Court in a very recent judgment of ***Ishwarlal Mali Rathod v. Gopal, (2021) 12 SCC 612***, had taken a similar view as noted in the judgment mentioned in the foregoing paragraphs. It observed as under:

“7. As observed hereinabove, the present is a classic example of misuse of adjournments granted by the court. It is to be noted that the respondents herein — original plaintiffs filed the suit for eviction, arrears of rent and mesne profit as far back as in the year 2013. That thereafter despite the repeated adjournments sought and granted by the court and even twice the adjournments were granted as a last opportunity and even the cost was imposed, the defendant failed to cross-examine the plaintiff's witness. Although adequate liberty was given to the defendant to cross-examine the plaintiff's witness, they never availed of the same and went on delaying the proceedings by repeated prayers of adjournment and unfortunately the trial court and even subsequently, the High Court continued to grant adjournment after adjournment and as such contributed to the delay in disposal of the suit which as such was for eviction. Such approach is wholly condemnable. Law and professional



ethics do not permit such practice. Repeated adjournments on one or the other pretext and adopting the dilatory tactics is an insult to justice and concept of speedy disposal of cases. The petitioner-defendant acted in a manner to cause colossal insult to justice and to concept of speedy disposal of civil litigation.

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9. Today the judiciary and the justice delivery system is facing acute problem of delay which ultimately affects the right of the litigant to access to justice and the speedy trial. Arrears are mounting because of such delay and dilatory tactics and asking repeated adjournments by the advocates and mechanically and in routine manner granted by the courts. It cannot be disputed that due to delay in access to justice and not getting the timely justice it may shaken the trust and confidence of the litigants in the justice delivery system. Many a time, the task of adjournments is used to kill justice. Repeated adjournments break the back of the litigants. The courts are enjoined upon to perform their duties with the object of strengthening the confidence of common man in the institution entrusted with the administration of justice. Any effort which weakens the system and shake the faith of the common man in the justice dispensation has to be discouraged. Therefore the courts shall not grant the adjournments in routine manner and mechanically and shall not be a party to cause for delay in dispensing the justice. The courts have to be diligent and take timely action in order to usher in efficient justice dispensation system and maintain faith in rule of law.

10. We are also aware that whenever the trial courts refused to grant unnecessary adjournments many a times they are accused of being strict and they may face displeasure of the Bar. However, the judicial officers shall not worry about that if his conscience is clear and the judicial officer has to bear in mind his duties to the litigants who are before the courts and who have come for justice and for whom the courts are meant and all efforts shall be made by the courts to provide timely justice to the litigants.”



29. This Court is of the view that ideally, the recording of evidence should be continuous, followed by arguments, without any gap. The Courts should constantly endeavour to follow such a schedule and the CPC expects them to do so. In regard to the same, adjournments must be avoided. The said principle has also been affirmed by the Hon'ble Supreme Court in ***Gayathri v. M. Girish*, (2016) 14 SCC 142.**

30. Further, a coordinate bench of this Court in ***Deepak v. Ramesh Sethi*, 2022 SCC OnLine Del 1321**, while discussing on the aspect of right to lead evidence observed as follows:

“13. The right to lead evidence is pivotal to a fair trial and partakes of the character of natural justice and fair play. No doubt, where a party is unconscionably indolent, the Court may put its foot down and close the right of the party to lead evidence; else, as adversarial litigations are meant to be tried after allowing the parties to an adequate opportunity to place their respective stands on record, the Court should not be hyper-technical, in the matter of granting opportunity to lead evidence and the like.”

31. Granting repeated adjournments in a routine manner and how it ultimately affects the justice delivery system as such has been considered by this Court and the Hon'ble Supreme Court in a catena of decisions, and asking or granting of such repeated adjournments have been condemned time and again. The law as settled explicitly contemplates that the rules of procedure are handmaids of justice and are meant to advance the ends of justice and not to thwart or obstruct the same.

32. In light of the abovementioned judgments, this Court is of the view that in civil proceedings considerable time is spent at the interim stage, such



as the stage of leading evidences. The objective of the Court should only be to safeguard the rights of the parties and to give more time to the substantive proceedings rather than the interim stages, which could bring an end to the *lis*. This Court is of the view that cross-examination of a witness is meant to be an opportunity to the concerned party to rebut the evidence given by the witness. The same ought to be concluded within a reasonable time limit and cannot continue *ad nauseam* i.e., repeatedly, in a never ending manner.

33. The issue in controversy being narrow, it is not necessary to allude to the specifics of the dispute between the parties. Suffice it to state that, by order dated 2nd January 2023, the right of the petitioner to lead evidence was closed.

34. The learned Trial Court had initially fixed the matter for cross-examination of DW-1 on 1st December 2018. Thereafter, upon perusal of the orders dated 1st December 2018, 11th May 2022, 7th November 2022 and 2nd January 2023, it is evident that the matter was adjourned several times, at the request of the petitioner on one pretext or another. The relevant paragraphs of the above said orders are reproduced herein for reference:

Order dated 1st December 2018 –

*“...Matter is at the stage of DE.
Adjournment is sought by the defendant on the ground
that main counsel is out of station. Adjournment not opposed.
Adjournment is allowed for today only...”*

Order dated 11th May 2022–

*“...On perusal of the record it is revealed that the
defendant is not willing to conclude the defence evidence. Ld.
Counsel for the plaintiff submits that his client is a senior*



citizen and he is unnecessary harassed by the Ld. Counsel for the defendant. Last and final opportunity is given to the Ld. Counsel for the defendant to conclude his defence evidence subject to the cost of Rs. 3000/- to be paid to the Ld. Counsel for the plaintiff....”

Order dated 7th November 2022—

“...Ld. Counsel for the defendant no. 1 seeks adjournment on the ground that defendant no. 1 is not well today and cannot undergo cross examination....”

Order dated 2nd January 2023—

AT 11:02 AM

...
None for the defendant.

Be awaited.

AT 12:21 PM

..None for the defendant.

Be awaited.

AT 01:03 PM

Since none has appeared for and on behalf of the defendant despite repeated calls, the right of the defendant to lead evidence of DW-1 is hereby closed and the part evidence of DW-1 shall not be read.

On perusal of list of witnesses filed on behalf of defendant, it is found that only DW-1 was to be examined as a witness. Accordingly, the right of the defendant to lead DE is hereby also closed...”

35. Further, between the time period of 18th March 2020, and 21st October



2021, the aforementioned Suit was taken up for hearing through Video Conferencing due to the then prevailing pandemic. The same was adjourned on various occasions, for the purpose of cross-examination of DW-1. It is pertinent to mention herein that this Court has observed by going through the annexures appended to this petition that the defendant had failed to appear before the learned Trial Court on various dates of hearing during the period mentioned hereinabove.

36. Thereafter, the petitioner had sought adjournments on some pretext or the other which as per the settled law, is against the intent of the CPC. In view of the same, the learned Trial Court in its order dated 11th May 2022, had observed that the petitioner is not willing to conclude his evidence and taking into consideration the fact that the respondent No. 1 is a senior citizen, it granted the petitioner a 'last and final opportunity' to conclude his defence evidence subject to payment of costs of Rs.3,000/-.

37. Subsequently, on 7th November 2022, at the request of the petitioner, he was granted yet another 'last and final opportunity' for cross-examination and the matter was again adjourned to the next date of hearing i.e., 2nd January 2023. The learned Trial Court *vide* order dated 7th November 2022, had issued specific directions stating that no further adjournments would be granted to either party owing to the fact that the respondent No. 1 is a senior citizen.

38. It is also peculiar to notice that the petitioner had filed an application under Section 151 of the CPC, along with an application under Section 5 of the Limitation Act, 1963, before the learned Court below, seeking recall of the order dated 2nd January 2023, which is impugned herein. The same was



disposed of as withdrawn.

39. Regardless of the allowances extended, the petitioner stood embedded on his adamantine platform and prayed for adjournment as if it was his right to seek adjournment on any ground whatsoever. The non-concern of the petitioner shown towards the proceedings of the Court is absolutely manifest. The disregard shown to the respondent No. 1's age on the part of the petitioner is visible, as also noted by the learned Trial Court in its orders dated 11th May 2022, and 7th November 2022.

40. In light of the facts and judgments referred to hereinabove, this Court is of the view that no litigant has a right to abuse the procedure provided in the CPC. Adjournments have become a tool which causes grave prejudice not only to the party whose rights have been affected but also to the judicial process of law. It is true that the cap on adjournments to a party during the hearing of the suit as provided in the proviso to Order XVII Rule 1 of the 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 said proviso to Order XVII Rule 1 of the CPC, should be maintained. As also noted by the Hon'ble Supreme Court in *Shiv Cotex (Supra)*, a justifiable cause is something which is not only a sufficient cause 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.

41. The cross-examination in the instant case seems to be continuing on dates after dates. Such cross-examination is nothing more than sheer harassment to the other party to the dispute and an abuse of the process of



law. Under such circumstances, the learned Court below was not inclined to grant any further opportunity for cross-examination.

42. This Court is of the view that when a prayer for deferring the cross-examination is made with an oblique motive to defeat the basic purposes of a trial, then if the right of the concerned party is closed for cross-examination, in such a case, only the said party is responsible for creating such an unwarranted and unpleasant situation.

43. The law in regard to the issue in hand is well settled. The petitioner ought to have been more serious and vigilant in defending the Suit and producing its evidence. If despite so many adjournments, the petitioner could not conclude his evidence as DW-1, then this Court is of the view that the petitioner deserves no sympathy by way of this revision petition filed under Section 115 of the CPC. This Court finds no justification at all in the averments made by the petitioner, thereby, adducing error in the impugned order passed by the learned Court below.

44. At this juncture, this Court deems it fit to briefly revisit the law in regard to the scope of exercise of this Court's power under Section 115 of the CPC. It is an already appreciated point of law by the Hon'ble Supreme Court in a catena of judgments. The said provision only confers a supervisory power to this Court with the main aim of keeping superintendence. The mere fact that the decision of the Trial Court is erroneous due to a question of fact or of law does not amount to any illegality or a material irregularity.

45. In view of the above, this court finds no infirmity in the impugned order which suggests that there is any error of jurisdiction or any other error



which goes to the root of the matter, thereby, calling for the intervention of this Court under Section 115 of the CPC.

46. Accordingly, looking at the conduct of the petitioner, this Court is of the considered view that no case is made out for interfering with the impugned order dated 2nd January 2023, passed by the learned ADJ-03, North, Rohini Courts, Delhi in Civil Suit bearing No. 59145/2016.

47. In view of the above discussions of facts and law, the instant petition is dismissed being devoid of any merits. Pending applications, if any, also stand dismissed.

48. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 4, 2023

pa/ryp

Click here to check corrigendum, if any