



2024:DHC:8194



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CM(M)-IPD 16/2024 & CM APPL. 50288/2024****SMC NOVA ESTATE PRIVATE LIMITED**

.....Petitioner

Through: Mr. Satish Kr., Mr. Rakesh Tiwari
and Mr. Shiv Kr. Yadav, Adv. with
Mr. Rapal Singh, Director in person.
M: 9582931401

versus

SURYA MARKETING COMPANY

.....Respondent

Through: Mr. Abhinav Bhatia, Ms. Gursharan
Kaur, Adv. along with Mr. Arun
Gupta, Adv.
M: 9999551989

CORAM:**HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T**

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23.10.2024**MINI PUSHKARNA, J:**

1. The present petition has been filed challenging the order dated 31st May, 2024 and 07th August, 2024 passed by the learned District Judge (Commercial Court) – 05, South, Saket Courts, New Delhi in *CS (COMM) 324/2019*, by which the right of the petitioner herein to cross-examine Prosecution Witness, i.e., PW-1, and to lead evidence as defendant in the suit, was closed.
2. The respondent/plaintiff filed a suit for perpetual injunction, restraining infringement/ passing off of the trademark/ copyright of the plaintiff, damages, rendition of accounts, etc. against the petitioner herein/defendant in the suit. Vide order dated 09th October, 2019, the learned



Commercial Court passed an *ex-parte ad interim* injunction against the petitioner herein, being the defendant in the suit, restraining the petitioner from using the trademark 'NOVA' or the trade dress belonging to the respondent herein, in any manner whatsoever, in connection with its trade or otherwise.

3. Subsequently, vide order dated 01st August, 2022, the learned Commercial Court confirmed the *ad interim* injunction passed vide order dated 09th October, 2019. Being aggrieved by the said order, the petitioner herein filed an appeal before Division Bench of this Court, being *FAO (COMM) No. 36/2023*. The said appeal was dismissed vide order dated 11th May, 2023, with a direction to the Trial Court to expedite the hearing and disposal of the suit.

4. In the meanwhile, before the Trial Court, the Examination-In-Chief of PW-1 was completed on 11th October, 2022. However, the cross-examination of the said witness was not done by the petitioner herein, in its capacity as defendant in the suit, on one ground or another. Thus, by order dated 31st May, 2024, the right of the petitioner herein, to cross-examine PW-1, was closed.

5. Subsequently, the matter was listed for defendant's evidence. However, the petitioner neither filed its defendant's evidence, nor produced any defendant's witnesses, and again sought to take an adjournment. Thus, vide order dated 07th August, 2024, the defendant's evidence, was closed.

6. The present petition has been filed challenging the aforesaid orders dated 31st May, 2024 and 07th August, 2024.

7. Having heard learned counsels for the parties and having perused the Court record, it transpires that the petitioner herein, as defendant in the suit,



sought repeated time for carrying out the cross-examination of PW-1. Adjournments were taken by the petitioner time and again on different pleas. Perusal of the order sheets of the learned Trial Court show that the matter was listed before the learned Trial Court on numerous occasions. However, the petitioner herein did not carry out the cross-examination of PW-1 and sought adjournment by taking refuge behind various excuses, for instance, the counsel being busy before this Court, pendency of appeal before this Court, illness of the counsel, non-availability of the counsel on account of personal difficulty, counsel being busy in another Court, etc.

8. The conduct of the petitioner in prolonging the matter before the Trial Court by taking repeated adjournments on one pretext or another, and not completing the evidence, is without any cogent justification. The petitioner's conduct is at complete variance with the purpose of establishing the Commercial Courts, which have been established with a view to expedite the disposal of commercial matters. No doubt, the right to examine and cross-examine is a valuable right. However, if a party chooses to adopt dilatory tactics and refuses to examine a witness despite various opportunities, without any due justification, on repeated occasions, then, no leniency can be shown to such a party.

9. Thus, holding that examination of a witness ought to be concluded within a reasonable time limit and cannot continue *ad nauseam*, repeatedly, in a never ending manner, this Court in the case of ***Rajinder Kumar Vs. Krishan Lal Ahuja and Others***¹, has held as follows:

“xxx xxx xxx

31. It is observed that seeking adjournments for postponing the

¹ 2023 SCC OnLine Del 5734



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.

32. 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.”

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35. 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.

36. 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.

xxx xxx xxx”

(Emphasis Supplied)

10. It has been laid time and again that a party to a suit is not at liberty to proceed with the trial at its leisure. A party has to be more serious and vigilant in prosecuting and producing evidence. Thus, deprecating grant of further opportunity to a party to lead evidence and branding the same as misplaced sympathy, where despite opportunities the said party had failed to lead evidence, Supreme Court in the case of *Shiv Cotex Vs. Tirgun Auto Plast Private Limited and Others*², has held as follows:

“xxx xxx xxx

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

² 2011 SCC OnLine SC 1175



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.

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(Emphasis Supplied)

11. Considering the aforesaid discussion, no merit is found in the present petition. The same is dismissed, along with the pending application.

(MINI PUSHKARNA)
JUDGE

OCTOBER 23, 2024/au