



2024:DHC:9285



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

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Date of Decision: 29.11.2024+ **W.P.(C) 16502/2024****R B SETH JESSA RAM HOSPITAL BROS**

.....Petitioner

Through: Mr. Vinod Kumar, Advocate

versus

R B SETH JESSA RAM HOSPITAL WORKMEN UNION

.....Respondent

Through: Mr. Fidel Sebastain, Advocate

CORAM: JUSTICE GIRISH KATHPALIA**ORDER (ORAL)****W.P.(C) 16502/2024 & CM APPL. 69731/2024 (stay) & CM APPL. 69732/2024 (exemption)**

“While it's important to maintain a friendly and cooperative atmosphere with the members of the Bar, this should not be misused as a pretext for frequent adjournment requests. A word of caution to the learned members of the Bar, at this juncture, would also be necessary because of they being considered as another wheel of the chariot of dispensation of justice. They should be circumspect in seeking adjournments, that too in old matters or matters which have been pending for decades and desist from making request or prayer for grant of adjournments for any reason whatsoever and should not take the goodness of the presiding officer as his/her weakness.”

{Yashpal Jain vs. Sushila Devi & Ors., 2023 SCC OnLine SC 1377}

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GIRISH KATHPALIA



1. The present writ action assails order dated 05.11.2024 of the Industrial Tribunal, whereby for reasons detailed in the order, cost of Rs. 20,000/- was imposed on the petitioner management. It would be apposite to commence the present order by extracting the entire impugned order, which is as follows:

“On the first call Sh. Anant Sharma, Ld. AR for management appeared through VC and sought a pass-over till 12:00 noon. Matter was pass over for 11:15 AM.

On second call, Sh. Vinod Kumar and Sh. Sparsh Jhanb both Ld. ARs for management appeared through VC and sought further pass over of the matter on the ground that their one matter is pending before Hon'ble Ms. Justice Rekha Palli, Delhi High Court.

Pass over of the matter more than once in favour of the same party is not possible. Hence, further passover is declined. WW-4 and WW-5 examined-in-chief. It is 12:05 PM now. Opportunity to cross-examine WW-4 and WW-5 is given to Sh. Sparsh Jhanb, Ld. AR for management appearing through VC at this stage.

At this stage, adjournment sought by Sh. Sh. Sparsh Jhanb, Ld. AR for management. As per CPC, busyness of a counsel in some other Court is no ground for adjournment.

Today itself three ARs for management have appeared through VC. There is no reason why one of them could not appear before this Court. The present matter is one of the oldest 20 matters pending in my court regarding which there are directions from the Hon'ble High Court for early disposal. Keeping in view the conduct of the management in the present case, no ground for adjournment is made of.

However, in the interest of justice, adjournment is allowed subject to a cost of Rs. 20,000/- with the further condition that the management shall have only one opportunity to cross-examine the witnesses, subject also to the availability of the witnesses.

Half of the cost shall be deposited with DLSA and the remaining shall be paid to both the witnesses equally.

Put up for showing deposit of cost, payment of cost and cross-examination of WW-4 and WW-5 and RWE on 07.11.2024.

At this stage, date is changed to 08.11.2024 on the request of Ld. AR for management.”

2. At the outset, learned counsel for petitioner was asked as to whether



he had satisfied himself about merits of this writ petition before filing the same; and he affirmed this.

3. Learned counsel for petitioner contends that the impugned order is not sustainable in the eyes of law because he had only sought a pass-over, so imposition of costs was completely unjustified. Learned counsel for petitioner also contends that he never took any adjournment before the trial court. Most significantly, learned counsel for petitioner also submits that on five dates, the learned judicial officers presiding over the Industrial Tribunal were on leave, and that ought to have been kept in mind while passing the impugned order. In reference to the date of 08.11.2024 (*for which the matter was posted vide the impugned order*), on being asked about the proceedings held on that day, learned counsel for petitioner discloses that on 08.11.2024 the petitioner filed an application for amendment of issues in this industrial dispute pending since the year 2009. No other argument has been raised.

4. In the case of ***Yashpal Jain*** (supra), the Hon'ble Supreme Court held thus:

“31. Apart from the above reasons, the other vital reasons include the over-tolerant nature of the courts below while extending their olive branch to grant adjournment at the drop of the hat and thereby bringing the entire judicial process to a grinding halt. It is crucial to understand that the wheels of justice must not merely turn, they must turn without friction, without bringing it to a grinding halt due to unwarranted delay. It is for such reasons that the system itself is being ridiculed not only by the litigant public but also by the general public, thereby showing signs of constant fear of delay in the minds of public which might occur during the resolution of dispute, dissuading them from knocking at the doors of



justice. All the stakeholders of the system have to be alive to this alarming situation and should thwart any attempt to pollute the stream of judicial process and same requires to be dealt with iron hands and curbed by nipping them at the bud, as otherwise the confidence of the public in the system would slowly be eroded. Be it the litigant public or Member of the Bar or anyone connected in the process of dispensation of justice, should not be allowed to dilute the judicial processes by delaying the said process by in any manner whatsoever. As held by this Court in T. Arivandandam v. T.V. Satyapal AIR (1977) 4 SCC 467 the answer to an irresponsible suit or litigation would be a vigilant judge. This analogy requires to be stretched in the instant case and to all the pending matters by necessarily holding that every stakeholder in the process of dispensation of justice is required to act swiftly, diligently, without giving scope for any delay in dispensation of justice. Thus, an onerous responsibility rests on the shoulders of the presiding officer of every court, who should be cautious and vigilant against such indolent acts and persons who attempt to thwart quick dispensation of justice. A response is expected from all parties involved, with a special emphasis on the presiding officer. The presiding officer must exercise due diligence to ensure that proceedings are conducted efficiently and without unnecessary delays.”

5. In the case of ***Ishwarlal Mali Rathod vs. Gopal & Ors.***, (2021) 12 SCC 612, the Hon’ble Supreme Court expressed concern thus:

“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.

12. Time has now come to change the work culture and get out of the adjournment culture so that confidence and trust put by the litigants in the justice delivery system is not shaken and Rule of Law is maintained.”

6. In the case of ***Blue Heavens Garments vs. M/s. Kids Collections***, 2010 SCC OnLine Del 1124, a coordinate bench of this Court held thus:

“5. I consider that principles of natural justice do not require that a case should be adjourned time and again because defendant's counsel adopt tactics of not appearing in the case on first and second call and then sends a proxy counsel so as to get the case postponed every time. Whenever a case is fixed for examination of witnesses, witnesses come to the court at 10 a.m. It is obligatory on counsel for the parties to make themselves available for examination/cross-examination of witnesses. The courts do not exist as an employment source for legal professionals alone. The existence of courts is justified only for dispute resolution between the parties in a reasonable time. Any effort by advocate of a party or by a party to drag the case and to harass the witnesses by not cross-examining and seeking adjournments again and again must be deprecated and curbed. It is not the prerogative of the advocate that he will cross-examine the witness when he has time. Counsel is supposed to manage his diary in such a manner that when there is a case for examination/cross-examination of the witnesses, he is there in the court for cross-examination, if not in the morning at 10 a.m. then around 11 a.m. when the miscellaneous matters are over. The court cannot keep on postponing evidence cases. If evidence cases are passed over time and again, ultimate result is that evidence cannot be recorded because of paucity of working time of that day. This result into harassment of the witnesses as they had to go back unexamined. The court management also gets grossly disturbed. Thus, in all evidence cases, counsel for the parties must be there for



examination of witnesses latest by 11 a.m. after miscellaneous matters are over. It cannot be expected of the trial court to get the witnesses waiting from 10 a.m. till 2-2:30 p.m. and then start examination of witnesses.”

7. Falling back to the present case, as reflected from the impugned order, the industrial dispute in which the impugned order was passed is one of the oldest 20 cases pending in that court. Admittedly, the petitioner management is being represented by three authorized representatives before the Industrial Tribunal, out of whom one appeared before the Tribunal on 05.11.2024 in the first call and sought a pass-over, which was granted by the Tribunal. Thereafter in second call, two other authorized representatives joined the hearing through video conferencing and sought yet another pass-over on the ground that another matter of theirs was listed before this Court. The learned Tribunal found it not possible to grant another pass-over, so declined the request and after recording the chief examination of two witnesses, offered the witnesses to both representatives of the petitioner management for cross examination. Despite that, those two authorized representatives refused to cross examine the witnesses and sought adjournment. Observing that there was no ground to adjourn the matter, the learned Tribunal kept in mind the interest of justice and adjourned the matter subject to costs of Rs. 20,000/-, half of which was directed to be paid to the witnesses who were being sent back without being cross examined and the remaining half was to be deposited with DLSA.

8. This is a classic case of efforts done by one of the litigants to protract the proceedings with the object of frustrating the other side so that the other



side gives up. Such a conduct, especially in the industrial disputes, which involve extreme disparity of resources available to the rival litigants has to be deprecated. As mentioned above, the petitioner management, despite facing such costs, again tried to derail the proceedings by seeking amendment of issues on 08.11.2024 in the dispute pending since the year 2009. That speaks volumes of their intention.

9. As regards the plea that cost was imposed only because the counsel sought a pass-over, as mentioned above, the plea is totally contrary to record. The pass-over request was allowed by the Tribunal as the witnesses of the respondent workmen were present.

10. It has been repeatedly observed and held that adjournments and pass-overs are not a matter of right of the counsel but only a courtesy extended by the Court. Since the witnesses were present, instead of adjourning the matter, the learned Tribunal wisely granted a pass-over and examined them in chief. Since despite pass-over, the authorized representatives of the petitioner management chose to insist for adjournment, the Tribunal justifiably imposed costs, to be paid to the witnesses. If the counsel for petitioner management could not maintain his diary, there was no fault of the witnesses who were being called again for their cross examination. Not only this, there is no explanation as to why out of three authorized representatives, the two who were present before the learned Tribunal chose not to cross examine the witnesses. It was a sheer harassment of the



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witnesses.

11. In my view, the learned Industrial Tribunal adopted a perfectly justified approach by first granting pass-over so that the witnesses would not go unexamined and thereafter offered the witnesses for cross examination by the authorized representatives of the petitioner management and finally adjourning the matter with costs to be paid to the witnesses, who had wasted their day and were to come again.

12. Considering the above circumstances, I find the present petition not just a devoid of merit but also completely frivolous and brought with oblique intention to further protract the proceedings, by even filing a stay application.

13. Therefore, the impugned order is upheld and the petition is dismissed with further costs of Rs. 20,000/- to be deposited by petitioner with DHCLSC within one week. The costs imposed vide the order impugned in this petition shall be paid and deposited in accordance with the impugned order within one week, failing which appropriate consequences shall follow.

**GIRISH
KATHPALIA**

Digitally signed by GIRISH KATHPALIA
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**GIRISH KATHPALIA
(JUDGE)**

NOVEMBER 29, 2024/rk

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