

(2013) 12 KAR CK 0048
In the Karnataka High Court
Case No : M.F.A. No. 9169/2013(CPC)

B.A. Viswanath

APPELLANT

Vs

Smt. Govindamma

RESPONDENT

Date of Decision : 18-12-2013

Acts Referred:

Citation : (2014) 3 AKR 538 : (2014) 2 KCCR 1229

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—This is plaintiff's appeal questioning the order passed by VII Additional City Civil Judge, Bangalore dated 11.09.2013 in Misc. No. 87/2010 whereunder petition filed by defendant under Order IX Rule 13 read with sections 141 and 151 of C.P.C. has been allowed and Judgment and decree passed in O.S. 2699/2004 on 28.07.2009 decreeing the suit has been set aside and suit has been restored to file on payment of cost of Rs. 2,000/- payable by defendant/petitioner to respondent-plaintiff. I have heard the arguments of Sri. C.G. Gopalaswamy, learned counsel appearing for petitioner and Sri. B. Prabhakar, learned counsel appearing for respondent and perused the records of trial court. By consent of learned advocates appearing for the parties appeal is taken up for final disposal.

2. Parties are referred to as per their rank in O.S. 2699/2004. Appellant herein was the plaintiff in O.S. 2699/2004 and he filed the suit for relief of declaration for cancellation of instrument i.e., gift deed dated 13.06.2003. Said suit was contested by respondent-defendant. When the matter was set down for evidence of plaintiff he filed an affidavit in lieu of examination-in-chief on 14.02.2008. Matter was adjourned from time to time for cross examination of PW-1. Subsequently he was discharged and it was posted to defendant's evidence. Later on defendant's evidence was closed on 28.10.2008 and matter was listed for arguments. At that point of time defendant filed an application for recalling of

PW-1. It was allowed and PW-1 was cross examined on two occasions. Though sufficient time was granted defendant did not further cross examine PW-1 and as such further cross examination was taken as nil by order dated 03.04.2009. Subsequently defendant and her counsel did not appear and matter was listed for defendant's evidence on 17.04.2009. On the said date none appeared on behalf of defendant and as such defendant evidence was taken as nil. Matter was listed for arguments on 20.04.2009. Even on the said date none appeared on behalf of defendant and as such the trial court heard the arguments of learned counsel appearing for plaintiff and posted the matter to 24.04.2009 for Judgment. On said date Judgment was not pronounced and it was adjourned from time to time from 24.04.2009 to 28.07.2009. Thereafter suit came to be decreed by Judgment and decree dated 28.07.2009. On 17.09.2009 an application u/s 151 of C.P.C. was filed by the advocate for plaintiff requesting the court to hear on office objection raised by the registry at the time of filing the suit. Undisputedly no notice of this application has been served on defendant or her counsel. Trial Court by order dated 16.09.2009 allowed the application and over ruled the office objection which related to payment of court fee and accepted the valuation made by plaintiff in the suit.

3. Subsequently on 21.01.2010 defendant filed a Miscellaneous in Misc. No. 87/2010 along with an application for condonation of delay. On service of summons in the miscellaneous proceedings plaintiff appeared and filed detailed statement of objections. Plaintiff raised objections regarding maintainability of petition contending that defendant ought to have filed an appeal against Judgment and decree dated 28.07.2009 since it was not an ex parte decree. However, said objection was over ruled by trial court by order dated 12.01.2011. Thereafter parties have tendered oral and documentary evidence. On evaluation of evidence trial court allowed the Miscellaneous petition 87/2010 and set aside the Judgment and decree dated 28.07.2009 passed in O.S. 2699/2004 and restored the suit to its file for being disposed of on merits by order dated 11.09.2013. It is this order which is under challenge in this appeal.

4. It is the contention of Sri. C.G. Gopalaswamy, learned counsel appearing for plaintiff that;

(i) Judgment and decree is not a ex parte decree and evidence that was available on record has been examined by trial court and as such an appeal had to be filed.

(ii) Nature of proceedings before the trial court culminating in decreeing the suit would fall within clause (b) of Rule 3 of Order XVII and hence appeal had to be filed u/s 96 of C.P.C. and it is not a Judgment passed under Rule 2 of order XVII and as such order IX is not attracted to facts of the present case.

(iii) Miscellaneous petition No. 87/2010 was barred by time.

(iv) No acceptable explanation was given as to the cause for non appearance of defendant on the date fixed for cross examination of PW-1; though several adjournments were granted by trial court same had not been utilized by

defendant to cross examine PW-1 or tendered evidence.

(v) PW-2, daughter of defendant who has been examined in Misc. 87/2010 had no personal knowledge and her evidence prima facie would indicate that it is contrary to averments made in the miscellaneous petition.

On these grounds learned counsel for petitioner has sought for allowing the appeal and setting aside the order passed by trial court.

5. Per contra, Sri. B. Prabhakar, learned counsel appearing for defendant would support the Judgment and decree passed by the trial court and would contend that proceedings in question had taken place ex parte namely from the stage of cross examination of PW-1, defendant did not participate in the proceedings and cause shown by her in the miscellaneous proceedings came to be accepted by trial court inasmuch as it was supported by documentary evidence and as such trial court was fully justified in exercising power under Rule 13 of Order IX since the Judgment and decree passed on 28.07.2009 would fall under ex parte decree and as such order XVII Rule 2 is attracted and as such order passed by trial court setting aside the ex parte decree does not suffer from any infirmity whatsoever. He would also submit that cause shown having been accepted by trial court to be the sufficient cause for non appearance of the defendant on the dates set down for cross examination of PW-1, namely trial court has taken into consideration the medical evidence available on record as also the old age of defendant as sufficient cause for her non appearance on the date fixed for cross examination of PW-1 and there is no infirmity whatsoever in the order passed by trial court and as such he submits that trial court has rightly held that it is an order passed under Rule 2 of Order XVII and as such the provisions of Order IX would be applicable and submits trial court order in question does not call for interference. In support of his submission he has relied upon the following Judgments:

1. G.P. Srivastava Vs. Shri R.K. Raizada and Others,
2. Smt. Ansari Sakeenabi Vs. Maligi Moideensab and others,
3. B. Janakiramaiah Chetty Vs. A.K. Parthasarathi and Others,
4. Kamakshi Vs. Jugraj Jain, .

6. Having heard the learned advocates appearing for the parties I am of the considered view that following points would arise for my consideration:

1. Whether the order passed by trial court allowing Miscellaneous Petition No. 87/2010 suffers from any error in law or is there any material irregularity calling for interference at the hands of this court?

2. What order?

7. Facts in detail has been already narrated by me hereinabove and delving upon those facts once again would be repetition and as such they are not delved upon. However in order to resolve the controversy between the parties it would suffice

if the following facts in brief are noted.

BRIEF BACKGROUND:

8. It is not in dispute that defendant has appeared and filed written statement and contested the suit. Based on the pleadings of the parties trial court framed issues for adjudication. In order to prove the contentions raised in the suit plaintiff filed his affidavit in lieu of examination-in-chief. Matter was being adjourned from time to time. Order sheet in O.S. 2699/2004 would clearly indicate that defendant had been taking time on one pretext or the other and did not cross examine plaintiff though it was listed for cross examination on 26.02.2008. From said date matter was adjourned till 27.08.2008 i.e., for a period of six months. On account of non representation of defendant and his counsel cross examination was taken as nil on 27.08.2008. When the matter was listed for defendant's evidence on 10.09.2008, 22.10.2008 and 28.10.2008 defendant did not lead her evidence. Subsequently on 04.11.2008 application filed by defendant for cross examination of PW-1 and permission to tender her evidence came to be allowed on payment of cost. On the next date i.e., 18.11.2008 plaintiff was cross examined in part. For want of time it was adjourned to 05.12.2008. Even on the said date adjournment was sought for by defendant's counsel and it was again adjourned to 02.01.2009, 09.01.2009 and 23.01.2009. When the witness PW-1 in the witness box was about to be discharged counsel for defendant appeared and cross examined PW-1 and at his request it was yet again adjourned to 30.01.2009. Subsequently defendant and his counsel never appeared before trial court and as such trial court left with no other option listed the matter for defendant's evidence and thereafter for arguments and after lapse of about four months it decreed the suit on 28.07.2009. Thereafter plaintiff filed an execution petition in Ex. Petition No. 2182/2009 and on service of notice in the execution petition defendant appeared and simultaneously filed Misc. 87/2010 under Order IX Rule 13 read with sections 141 and 151 of C.P.C. seeking for setting aside the Judgment and decree passed on 28.07.2009 contending inter alia that it was an ex parte judgment and decree and she had no notice and she did not appear on the date when it was set down for cross examining PW-1 on account of her ill health. Said plea of defendant came to be accepted by trial court in the Miscellaneous proceedings and as such it allowed the miscellaneous petition.

Re: Point No. 1:

9. Let me examine the very first contention of Sri. C.G. Gopalaswamy as to whether the provisions of Order IX ought not to have been invoked by trial court to set aside the Judgment and decree passed in O.S. 2699/2004 or not on the ground that it was not an ex parte decree.

10. It is not in dispute that under Order XVII Rule 2 if the parties to the suit fail to appear, trial court may proceed to dispose of the suit in any one of the modes directed in that behalf by Order IX or make such order as it thinks fit.

Explanation to Rule 2 of Order XVII would indicate that where the evidence or substantial portion of evidence of any party has already been recorded and such party fails to appear on any date to which the hearing of the suit is adjourned then trial court in its discretion to proceed with the case as if such party were present. Rule 3 of Order XVII would indicate that where a party to suit to whom time has been granted to produce his evidence or cause the attendance of witness or perform any other act necessary to further progress of the suit fails to appear or adduce such evidence within the time allowed by the court, may notwithstanding such default can proceed to decide the suit forthwith as if parties are present or if the parties or any one of them is absent proceed under Rule 2 of Order XVII. In the context of language employed in Rule 2 of Order XVII, provision of Order IX would be attracted. In other words when a party remains absent without leading evidence order XVII Rule 2 applies and court can proceed under Order IX.

11. It has been contended by Sri. C.G. Gopalaswamy, learned counsel for petitioner that in the instant case Rule 2 of Order XVII is not applicable inasmuch as there was no lapse on the part of the plaintiff and he had appeared on the date on which he was to be cross examined and as such trial court could not have invoked Order IX to set aside the Judgment and decree passed against defendant on 28.07.2009. Though said argument appears to be attractive at the first blush same cannot be accepted for the simple reason that clause (b) of Rule (3) would clearly indicate that if the parties or any of them is absent on the date fixed for performing their act and fails to appear on the said date the court would be empowered to proceed with the case as if such party is present. Thus, it has to be examined as to whether explanation is attracted to the facts on hand or not. In the instant case matter was set down for cross examination of PW-1 on 03.04.2009 neither the defendant nor her counsel were present and there was no representation on her behalf on said date. Hence, further cross examination was taken as nil. Later on suit was posted for defendant's evidence to 17.4.2009. None appeared on behalf of defendant on said date. Subsequently it was posted for arguments to 20.4.2009 and on said date neither defendant nor her counsel appeared. As such trial court has heard the arguments of plaintiffs counsel and posted the matter for pronouncing the Judgment on 20.4.2009. Thereafter, Judgment was not pronounced and it was adjourned from time to time i.e., 11.06.2009, 26.06.2009, 30.06.2009, 14.07.2009. On account of change of Presiding Officer arguments of plaintiff's counsel was heard afresh and posted the matter for defendant's arguments to 18.03.2009. On said date none appeared and defendants arguments was taken as nil and matter was posted to 25.07.2009 for Judgment. Since judgment was not ready it was posted to 28.07.2009. Thereafter trial court has proceeded to take into consideration the evidence available on record to decree the suit. There cannot be any dispute to the fact that when case was set down for cross examination of PW-1 none have appeared on behalf of defendant. Hence, cross examination of defendant was taken as nil. Thereafter defendant has not appeared and tendered evidence on

her behalf. She has remained absent throughout. Merely because the court adjourns the matter itself would not attract Rule 3 of order XVII or merely because plaintiff was examined and documents on his behalf was marked would not attract Rule 3 of Order XVII. Thus, it cannot be said that Rule 2 would not be applicable inasmuch as clause (b) of Rule 3 itself would indicate that in the event of parties or any one of them being absent the court is required to proceed under Rule 2. This view is also fortified by Judgment of the Hon"ble Apex Court in the case of Prakash Chander Manchanda and Another Vs. Janki Manchanda, whereunder it has been held as follows:-

6. In some decisions, the High Courts have gone to the extent of saying that even if the trial court disposes of the matter as if it was disposing it on merits under Order XVII Rule 3 still if the party against whom the decision was pronounced was absent it could not be treated to be a disposal in accordance with Order XVII Rule 3 and provisions of Order 9 will be available to such a party either for restoration or for setting aside an ex parte decree. Learned counsel placed before us a number of decisions of various High Courts on this aspect of the matter. But in our opinion in view of the amendment to these two rules which have been made by 1976 amendment of the CPC it is not disputed that to the facts of this case, CPC as amended will be applicable and therefore it is not necessary for us to (go) into that question. Order XVII Rule 2 and Rule 3 as they now stand read:

Order XVII, Rule 2: Procedure if parties fail to appear on day fixed:

Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

(Explanation--Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion proceed with the case as if such party were present.

Order XVII Rule 3: Court may proceed notwithstanding either party fails to produce evidence, etc.

Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding, such default,--

- (a) if the parties are present, proceed to decide the suit forthwith, or
- (b) if the parties are, or any of them is absent, proceed under Rule 2.

It is clear that in cases where a party is absent only course is as mentioned in Order XVII(3)(b) to proceed under Rule 2. It is therefore clear that in absence of

the defendant, the Court had no option but to proceed under Rule 2, Similarly the language of Rule 2 as now stands also clearly lays down that if any one of the parties fails to appear, the Court has to proceed to dispose of the suit in one of the modes directed under Order 9. The explanation to Rule 2 gives a discretion to the Court to proceed under Rule 3 even if a party is absent but that discretion is limited only in cases where a party which is absent has led some evidence or has examined substantial part of their evidence. It is therefore clear that if on a date fixed, one of the parties remain absent and for that party no evidence has been examined upto that date the Court has no option but to proceed to dispose of the matter in accordance with Order XVII Rule 2 in any one of the modes prescribed under Order 9 of the Code of Civil Procedure. It is therefore clear that after this amendment in Order XVII Rules 2 and 3 of the CPC there remains no doubt and therefore there is no possibility of any controversy. In this view of the matter it is clear that when in the present case on 30.10.1985 when the case was called nobody was present for the defendant. It is also clear that till that date the plaintiff's evidence has been recorded but no evidence for defendant was: recorded. The defendant was only to begin on this date or an earlier date when the case was adjourned. It is therefore clear that upto the date i.e., 30.10.1985 when the trial court closed the case of defendant there was no evidence on record on behalf of the defendant. In this view of the matter therefore the explanation to Order XVII Rule 2 was not applicable at all. Apparently when the defendant was absent Order XVII Rule 2 only permitted the Court to proceed to dispose of the matter in any one of the modes provided under Order 9.

7. It is also clear that Order XVII Rule 3 as it stands was not applicable to the facts of this case as admittedly on the date when the evidence of defendant was closed nobody appeared for the defendant. In this view of the matter it could not be disputed that the Court when proceeded to dispose of the suit on merits had committed an error. Unfortunately even on the review application, the learned trial Court went on in the controversy about Order XVII Rules 2 and 3, which existed before the amendment and rejected the review application and on appeal the High Court also unfortunately dismissed the appeal in limine by one word.

8. The learned counsel for the respondent attempted to contend that in this view of law as it now stands an application under Order 9 Rule 13 will be maintainable. However it was suggested that there was also an objection of limitation about the acceptance of that application. It is apparent that the learned trial Court has not considered the application on merits but has only rejected it as not maintainable and that order has been maintained. This objection of the learned counsel for the respondent is not necessary for us to go into at this stage as in view of the law discussed above, the order rejecting the application as not maintainable, has to be set aside and it will be open to the learned trial Court to consider the application under Order 9 Rule 13 and dispose it of in accordance with that law and while so doing, it may even examine the objections that may be raised by the respondent.

12. A perusal of the above referred Judgment would clearly indicate if on the date fixed for hearing if the parties to the suit were to remain absent the court would be left with no other option but to proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit. In the absence of defendant the court has no other option but to proceed under Rule 2 and as such adopting the mode prescribed under Order IX it has to proceed to dispose of the suit ex parte. Explanation appended to Rule 2 of Order XVII gives a discretion to the court to proceed under Rule 3 even if the party is absent. However, such discretion is limited to case where party who was absent had led evidence wholly or substantially. Hence, first contention raised by Sri. C.G. Gopalaswamy cannot be accepted and it stands rejected.

13. Insofar as second contention with regard to the merits of the claim is concerned is examined in the background of contention raised by defendant in the miscellaneous petition seeking for setting aside the ex parte Judgment and decree by examining the records namely medical records produced by defendant before trial court in Misc. 87/2010 it would clearly indicate that she was suffering from various age related ailments and she has tendered evidence before the trial court by way of documentary evidence through her daughter PW-2 to establish that on the date fixed for cross examination of PW-1 she was unable to be present before the trial court. She has also established by producing medical records that even on previous dates when suit was set down for cross examination of PW-1 she was not keeping good health and as such she had not appeared before trial court. The reasons assigned herein below would substantiate the said fact.

14. At the outset it requires to be noticed that a party approaching court belatedly would not stand to benefit. Technicalities, if at all, if any has to yield to substantial justice. Courts are respected not because it has power to punish the guilty but it is respected since it has got the power to undo the injustice that has been caused to the parties. It has been held by Hon"ble Apex Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, to the following effect:

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

15. Keeping these principles in mind when the order of trial court condoning the delay and setting aside the ex parte Judgment and decree passed in O.S. 2699/2004 on 28.07.2009 is examined it would clearly indicate that the lis in the instant case is between son and mother. Undisputedly plaintiff is the only son of defendant. Matter could have been settled amicably amongst themselves but for the reasons best known to them they have been litigating in the court. Be that as it may. Reason assigned by defendant for non appearance on the date fixed for cross examination of PW-1 was on account of various age related ailments and as

such she could not appear before the trial court. To substantiate her plea put forward in petition for setting aside the Judgment and decree in question she filed her affidavit in lieu of examination-in-chief. However, she did not appear before court and she did not enter the witness box. Later her daughter Smt. B.A. Komala appeared and tendered her evidence on behalf of her mother and petitioner as PW-2. It is no doubt true that there are certain inconsistencies with regard to address of the petitioner as rightly pointed out by Sri. C.G. Gopalaswamy. But that by itself would not be a ground to ignore the overwhelming documentary evidence available on record namely Exhibit P-11 which is a bill issued by Sri. Jayadeva Institute of Cardiology dated 15.05.2009 which would clearly indicate that defendant was inpatient at Sri. Jayadeva Hospital from 11.05.2009 at 4.24 P.M. and she was discharged on 15.05.2009. Case sheet of Sri. Jayadeva Institute of Cardiology which came to be produced as per Exhibit P-12 would indicate that on clinical evaluation of defendant doctor had advised her to be admitted to ICCU-3 as she was suffering from heart ailment and breathlessness. Final diagnosis reads as under:

IHD - Angina - "AS" to be excluded.

16. Records of Sri. Jayadeva Hospital including bills produced and marked as Exhibits P-7 to P-12 in Misc. 87/2010 would clearly indicate that medical advice had been given by doctors for treating the defendant as inpatient and for all the procedures that was adopted as prescribed by the doctor bills have been raised. Even before defendant was admitted to Sri. Jayadeva Hospital she had been attended to by doctors at Agadi Hospital during April 2009. Certificate issued by the said hospital which came to be marked as Exhibit P-6 would clearly indicate that defendant was suffering heart ailment and as such she was advised higher treatment and as such she was referred to Sri. Jayadeva Hospital. It is because of this recommendation made by Agadi hospital she has taken treatment at Sri. Jayadeva Institute of Cardiology. These bills and certificates related to period April 2009 to June 2009. It was because of these reasons defendant remained absent before trial court and in this background trial court has examined as to whether there was sufficient cause for non appearance of defendant on the date fixed and found that there was reasonable cause and explanation given by defendant came to be accepted by trial court as sufficient cause and unable to be present on the date when PW-1 was to be cross examined. The sufficiency of cause as explained by PW-2 corroborates the documentary evidence tendered by defendant and as such same came to be accepted by trial court and it is held that absence of defendant on the date fixed for cross examining PW-1 or on further dates there was sufficient cause and her absence was not intentional. Infact the Hon"ble Apex Court in the case of G.P. Srivastava Vs. Shri R.K. Raizada and Others, has held "Sufficient cause" is to be liberally construed. It has been held in the said judgment as to how sufficiency of cause when explained for non appearance is to be understood.

7. Under Order 9 Rule 13 C.P.C. an ex-parte decree passed against a defendant

can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any "sufficient cause" from appearing when the suit was called on for hearing. Unless "sufficient cause" is shown for non-appearance of the defendant in the case on the date of hearing, the Court has no power to set aside an ex-parte decree. The words "was prevented by any sufficient cause from appearing" must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as elastic expression for which no hard and fast guidelines can be prescribed. The courts have a wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The "sufficient cause" for non appearance refers to the date on which the absence was made a ground for proceeding ex-parte and cannot be stretched to rely upon other circumstances anterior in time. If "sufficient cause" is made out for non appearance of the defendant on the date fixed for hearing when ex-parte proceedings initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where the defendant approaches the Court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits.

17. In that view of the matter I am of the considered view that order of the trial court condoning the delay in filing the miscellaneous petition and setting aside the ex-parte Judgment and decree neither suffers from any error in law nor there is any material irregularity that has occasioned calling for interference at the hands of this court. Accordingly point No. 1 is answered against the appellant and in favour of respondent.

Re: Point No. 2:

This court vide order dated 12.12.2013 had directed the appellant to deposit a sum of Rs. 15,000/- to cover the costs in the event of appellant not being able to demonstrate his contention to award realistic cost to the respondent if being successful in these proceedings. Undisputedly respondent-defendant has been successful in these proceedings. This court would have directed costs so deposited by appellant to be paid to respondent-defendant but I refrain from doing so for the reason that order sheet in O.S. 2699/2004 would indicate that defendant has been taking time on one pretext or the other and only when PW-1 came to be discharged an application was filed to recall PW-1. Having made a show of cross examination defendant did not complete the cross examination and later on disappeared from the scene though for sufficient cause. As such court adjudicating miscellaneous petition has awarded cost in favour of plaintiff which is just and proper. As such if cost deposited by appellant is ordered to be paid to respondent it would act as a premium to the defendant and such situation should

not be allowed. In that view of the matter cost deposited by appellant-plaintiff before this court in the present appeal is ordered to be refunded to him by the registry on proper identification.

For the reasons aforesaid, following order is passed:

ORDER

1. Appeal is hereby dismissed.
2. Order passed by VII Additional City Civil Judge, Bangalore dated 11.09.2013 in Misc. 87/2010 is hereby affirmed.
3. Amount in deposit made by appellant is ordered to be refunded to the appellant by the registry on proper identification.
4. It is made clear that both the parties shall co-operate with the trial court in disposal of the suit expeditiously at any rate within nine months from the next date of hearing. If either of the parties were to seek for adjournment without any justifiable cause to the satisfaction of trial court it would be at liberty to impose costs on such party which shall not be less than Rs. 5,000/- per adjournment.