

(1994) 07 DEL CK 0025
In the Delhi High Court
Case No : F.A.O. No. 13/75

Bank of Baroda

APPELLANT

Vs

Sansar Chand Kapur and another

RESPONDENT

Date of Decision : 28-07-1994

Acts Referred:

Citation : (1994) 3 AD 834 : AIR 1994 Delhi 359 : (1994) 56 DLT 555 : (1994) 30 DRJ 270 : (1994) RLR 433

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : Mr. Parmod B. Agarwala and Mr. Satish Aggarwal, for the Appellant;
Mr. A.K. Sikri, for the Respondent

Judgement

1. Delay, it is said, defeats justice. Surely, I have noticed something else too. It sometimes wears down even the Advocates with the result that when exposition is expected at some length, the arguments end in a whimper. I could easily discern such weariness in this appeal of 1975. The fire was amiss and so also a lawyer's most effective weapon, the precedent.

2. The question raised is as old as the hills. However, let us first hurry through the facts. The suit was dismissed in default. The very next day of that order an application was moved for its restoration and the plea taken was that whereas the counsel was busy in the High Court the trial Judge refused to adjourn the case on the request of his clerk on the ground that he had no authority to appear. The trial Judge recorded the evidence and held that the clerk had not put in appearance and as far as the counsel was concerned his absence constituted no "sufficient cause". The application thus invited the order of dismissal. This was on August 20, 1974. The present appeal against that order was admitted on February 4, 1975.

3. Does the absence of a lawyer on the ground that he had some professional work elsewhere, constitute a "sufficient cause" within the meaning of Order 9, Rule 9 of the Code of Civil Procedure? This then is the question. In Mukta Devi

Panda Vs. Harish Chandra Panda, , the answer was that it may not by itself amount to sufficient cause. In Tulsiram Bhagwandas Vs. Sitaram Srigopal, , the court opined that such absence "may not always be a sufficient cause". And, relying upon the said two judgments the Judicial Commissioner of Goa, Daman and Diu opined that such absence for no fault of the party is not "necessarily sufficient cause for non-appearance of the party" (see Ananta Pondu Prorobo Desai v. Smt. Lalita Poi, AIR 1975 G & D 30. One may also recall the Full Bench decision reported in U. Aungvi v. Govt. of Burma, AIR 1940 Rang 162, wherein their Lordships observed that advocates who were engaged in cases which were fixed for hearing at a given time and place cannot be allowed to treat the court before which the hearing is to take place with contumely or indifference, and then apply casually for reinstatement of a suit dismissed in their absence merely because they hoped or believed that they might attend the hearing. They must take reasonable precaution, and the provisions of Order 9, Rule 9 become meaningless if it can afterwards be urged that although none were taken and there was no sufficient cause for their non-attendance, the suit can still be restored to the file, because the litigant would otherwise suffer.

4. Two judgments have been noticed by the learned Additional District Judge also and both come from this Court. The first is M/s. Deshbandhu Gupta & Co. v. M/s. K. B. Malik & Co., 1972 Rajdhani Law Reporter 18, wherein the learned single Judge observed :

"Going to the court at 11.45 a.m. by itself was no justification for asking for the restoration of the suit. Whenever and wherever a court is seized of a matter and the same is running in the daily list, if the counsel or the party wants to be accommodated, the request is to be made to the court at the earliest that the case may be taken at a particular part of the day. A party cannot make the choice of leisurely absenting itself and then saying that at a particular time the counsel for the party or the party itself walked into the court-room and, Therefore, for that reason the court should have felt satisfied and should have restored a suit or a matter which may have been otherwise dismissed in exercise of appropriate jurisdiction."

The second comes from the pen of I. D. Dua, C. J. (as His Lordship then was) in Hari Chand v. Mohinder Nath, AIR 1969 CJ 925, wherein it was observed :

"It must clearly be understood to be the duty of the counsel who have more cases more than one fixed in one day before different Judges of the same court, to see that they make suitable arrangement with some colleague of theirs to appear for them in their cases which called for hearing during their occupation elsewhere."

5. I need to pause here for a short while only. And in this interregnum I may notice what the courts have said on dismissal of suits for default in appearance. Says the Special Bench in P.D. Shamdassani Vs. The Central Bank of India Ltd., .

"It is a very serious matter to dismiss a man's suit or summons, or whatever it

may be, without hearing it, and that course ought not to be adopted unless the court is really satisfied that justice so requires. Thus a Court should refuse to restore a matter, only if there is gross negligence or gross carelessness."

6. Can we afford to ignore those words of sagacity? Surely not. And keeping them in mind, should one be so harsh on the suitor so as to dismiss his cause in default because the lawyer engaged to represent him found it not possible despite effort, to appear on account of some other professional commitment? Due regard has to be had to the nature of the duties of the counsel towards his other clients and the other courts. The expression "sufficient cause" is not a catchword. It is adequately elastic to enable the court to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of Courts (see Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others,).

7. And, it is in the light seen above that the court is required to approach the subject.

8. The learned Additional District Judge, on appreciation of evidence came to the conclusion that the Clerk of plaintiff's counsel had not put in appearance. He rightly held so. The Court record does not support the clerk. Two witnesses examined by the other side falsify him. So far, so good. However, he ignored even the statement of Mr. F. C. Bedi, Advocate for the appellant to the effect that his non-appearance was on account of his having remained busy in the High Court. And, it is here that the learned Additional District Judge, despite his vast experience and insight, faltered and lost the grip, for, the absence of the lawyer on account of his having remained busy in another court constitutes a "sufficient cause" is no more in doubt (see Savithri Amma Seethamma Vs. Aratha Karthy and Others, .

9. "Sufficient Cause" has to be given a meaning to embrace all relevant circumstances having bearing on the point in issue and since a Judge has to adjudicate on the particular facts of each case, it may become very risky in such cases to act on precedents. It is, however, not every absence of a lawyer which may provide a sufficient cause. The question would be whether he honestly intended to be in court and did his best to get there in time and once the court feels satisfied that he did try to get there and that he would have even got there in time but for the intervention of some inevitable cause for which he could in no way be responsible, there would be the "sufficient cause" inviting an order of restoration.

10. The appeal is allowed with the result that the suit dismissed in default shall stand restored. However, no order is made as to costs.

11. Appeal allowed.