

(1999) 09 DEL CK 0054

In the Delhi High Court

Case No : Civil Revision No. 808 of 1998 and C.M. 3074 of 1998

Bareilly Corporation Bank Ltd.

APPELLANT

Vs

Krishna Gulati and Others

RESPONDENT

Date of Decision : 06-09-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 2, Order 17 Rule 3

Citation : (2000) 3 AD 170 : (2000) 84 DLT 227

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. Ravinder Singh, for the Appellant; Mr. Sandeep Puri, for the Respondent

Judgement

M.K. Sharma, J.—This revision petition is directed against the order dated 19.8.1998 passed by the Additional District Judge in Suit No. 232/1999 dismissing the application filed by the petitioner under Order 17, Rules 2 and 3, CPC. The aforesaid suit was instituted by the respondent as plaintiff. The aforesaid suit was fixed for recording evidence of the witnesses of the defendant on 6.8.1998. On 6.8.1998 Counsel for the defendant did not appear and it was stated by the proxy Counsel that the Counsel for the defendant is not in a position to get the evidence of the defendant recorded on that date. The Additional District Judge, however, was of the opinion that the aforesaid prayer is not tenable and also held that the excuse sought to be put up is no excuse in the eye of law, and accordingly, fixed the suit for arguments on 19.8.1998 after closing the evidence of the defendant. On 19.8.1998 an application was filed by the defendant which was dismissed by the impugned order. The Trial Court, on consideration of the application filed by the defendant found that the fact stated in the application is contrary to the record.

2. I have heard the learned Counsel appearing for the parties. Counsel appearing for the petitioner/defendant states that if one last opportunity is granted to the defendant the entire evidence of the defendant would be got recorded on the

next date positively and that no adjournment shall be sought for by the defendant under any circumstances. Considering the entire facts and circumstances of the case and also the fact that one time default was committed by the Advocate for the defendant only on 4.5.1998 one last opportunity is granted to the defendant to examine his witnesses on a day to be fixed by the Trial Court. It is made clear that the entire evidence of the defendant shall be led on one day in terms of the statement made in this Court and that no adjournment shall be sought for by the defendant on any pretext on the next date. In the event of the defendant, failing to produce any witness on the next date it shall be open to the Additional District Judge to proceed in the suit in accordance with law. In terms of the aforesaid order the petition stands disposed with the condition of payment of costs of Rs.3,500/- to the plaintiff/respondent on the date of appearance before the Trial Court. The parties shall appear before the Trial Court on 10.9.1999 for obtaining the date for recording evidence of the defendant.