

(2011) 10 AHC CK 0136
In the Allahabad High Court
Case No : Writ - C. No. - 61529 of 2011

Bhagwat Prasad Sharma and Another	APPELLANT
Vs	
District Judge, G.B. Nagar and Others	RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 4

Citation : (2012) 115 RD 288

Hon'ble Judges : Abhinava Upadhyaya, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Abhinava Upadhyaya, J.—By means of this writ petition the petitioners have filed an application under Order 18 Rule 4 CPC for examination-in chief.

2. The said application was fixed to be considered on 28.7.2010. On 28.7.2010 holiday was declared. However, the matter was posted for 29.7.2010 but on that date the Advocates were on strike and the matter was posted on 19.8.2010. On that date the petitioners-defendants moved an application for adjournment. The application for adjournment was rejected and the evidence of the petitioners-defendants was closed and fixed the matter for arguments. The petitioners thereafter filed an application for recalling the said order which was rejected against which revision was filed which was also rejected vide order dated 30.8.2011.

3. The contention of the learned counsel for the petitioners is that their defence has been directed to be closed vide order dated 19.8.2010 on the ground that in the past also they have not attended the proceeding and the case was continuously adjourned on this ground. The revisional court has also affirmed the order of the court below.

4. Learned counsel for the petitioners has relied upon a decision of the Hon"ble Supreme Court in the case of State Bank of India v. Km. Chandra Govindji

reported in JT 2000 (Suppl.) SC 433. In paragraph-7 of the said judgment the Hon"ble Supreme Court has held that the adjournment sought on a particular date bona fide of that has to be seen for that date. Earlier adjournment may not be very relevant.

5. But at the time, in my opinion the conduct of the parties can always be looked into and if any of the parties are found instrumental in getting the proceedings delayed by adopting dilatory methods, the court below is at liberty to deny any such adjournment. which may result in installing the proceedings. However, in the present case, in my view, the grave hardship would meet the defendant if his evidence is closed at this stage.

6. Under the circumstances, no useful purpose would be served in keeping this writ petition pending and calling for a counter affidavit which may result in further delay, therefore, in my view, it would meet the ends of justice, if the petitioners are allowed to lead their evidence on a date to be fixed by the court below upon furnishing cost of Rs. 5,000/-to the plaintiff-respondent no.3. The said cost will be given by way of bank draft in the name of the plaintiff in the court below.

7. It is provided that the petitioners will make an appropriate application along with the certified copy of this order before the court below which in turn will fix the date for considering the matter and proceed thereafter in accordance with law.

8. It is further directed that the petitioners will present the application in the court below on 29th October, 2011 which is said to be the date fixed before the court below.

9. Learned counsel for the defendants-petitioners has extended an undertaking on the instruction of their clients that no further adjournments will be sought by the defendants-petitioners and they will cooperate in the speedy disposal of the case.

10. Subject to the aforesaid condition, the orders impugned dated 30.5.2011 passed by the Civil Judge (Junior Division), Gautam Budh Nagar and 30.8.2011 passed by District Judge, Gautam Budh Nagar are set aside and the writ petition to that extent is allowed.