

**(1995) 03 BOM CK 0069**

**In the Bombay High Court**

**Case No :** Civil Revision Application No. 1029 of 1994

|                                          |            |
|------------------------------------------|------------|
| Dhanraj Lilaram Motwani and Another      | APPELLANT  |
| Vs                                       |            |
| Rajendra Kumar Dayachand Jain and Others | RESPONDENT |

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**Date of Decision :** 10-03-1995

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12

**Citation :** AIR 1996 Bom 3 : (1995) 4 BomCR 659

**Hon'ble Judges :** R.M. Lodha, J

**Bench :** Single Bench

**Advocate :** J.N. Chandurkar, for the Appellant;

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## Judgement

1. Heard Shri J.N.Chandurkar, learned counsel for the applicants.
2. Shri Chandurkar submits that the discretion exercised by the Civil Judge, Senior Division, Gondia, in refusing to grant adjournment was not proper and not in consonance with the principles of natural justice.
3. Before considering the question raised by Shri Chandurkar, some facts may be noted.

One Dayachand Jain filed a suit for possession, arrears of rent and damages against the present applicants and the said suit was filed after he obtained permission of the Rent Controller to determine the tenancy of the tenants. The suit for possession, arrears of rent and damages was decreed on 13-1-1991 and an application for determination of mense profits was filed under Order XX, Rule 12 of the CPC (for short "C.P.C.") The said proceedings under Order XX, Rule 12, C.P.C. continued and from time to time the applicants sought time. On 21-7-1994, since by that time the judgment-debtors had sought lot of adjournments, the trial Court granted adjournment as a last chance at the request of the present applicants and fixed the case on 4-8-1994. On 4-8-1994 again an application was filed by the counsel for the applicants, stating that he had to go to the School Tribunal at Bhandara and he sought the permission to file

the reply on the next date. This application was rejected by the Civil Judge, Senior Division, Gondia, on 4-8-1994, observing that on the previous date time was granted as last chance and, therefore, the application deserved to be rejected.

4. The procedure in getting a decree for eviction by a landlord against the tenant in this region is very cumbersome, inasmuch as the landlord is first required to get permission from the Rent the Controller having jurisdiction in the matter to determine the tenancy of the tenant. It is only after that permission is granted by the Rent Controller, the landlord can determine the tenancy of the tenant and after determining the tenancy he has to file the regular suit for possession/eviction and mesne profits/damages against the tenant. After having been gone through this cumbersome procedure, ultimately the landlord decree-holder got the decree from the Civil Court on 13-1-1991 and as regards determination of mesne profits, proceedings under Order XX, Rule 12, C.P.C. were registered. The said proceedings were registered in the year 1991 and for almost three years on one ground or the other, the judgment-debtors/applicants succeeded in not allowing the Court to proceed further and by 21-7-1994 and for about three years the applicants did not even file the reply before the trial Court. On 21-7-1994, however, the Court granted the applicants last chance for filing the reply and the matter was fixed on 4-8-1994. Yet again, same prayer for adjournment was made on 4-8-94 by the counsel for the applicants on the ground that he was required to go the School Tribunal and, therefore, prayed for time. Order XVII, Rule 1 of the CPC provides as under:

"Court may grant time and adjourn hearing-1. (1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

Costs of adjournment: (2) In every such case the Court shall fix a day for further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that--

(a) when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary,

(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party,

(c) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment,

(d) where the illness of a of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is

satisfied that the party applying for adjournment could not have engaged another pleader in time,

(e) where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid."

5. The letter of this rule is that no adjournment shall be granted at the request of the party, except where the circumstances are beyond the control of that party. It further provides that the fact that the pleader of the party is engaged in another Court shall not be a ground of adjournment. It is also provided that where the pleader is unable to conduct the case for any reason other than his being engaged in another Court and such reason is put forward as a ground for adjournment, the Court shall not grant adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time. The letter of Order XVII, Rule 1 of the CPC is more followed in breach than in compliance. Adjournments are sought for and granted by the Courts as a matter of course. Proceedings in the suits are not allowed to move much less conclude by one of the parties interested in delay. The spirit of providing justice expeditiously is shattered and stalled by non-observance of Order XVII, Rule 1, C.P.C. and as a result thereof, it takes years and years before the proceedings are concluded before the trial Courts. If delay in disposal of cases is to be curbed, the wholesome provision of Order XVII has to be given the meaning it deserves. Interest of justice demands that the proceedings before the civil Courts are completed as expeditiously as possible and effective work is done in every case on each date of hearing. It was only in this background that Order XVII, Rule 1 has been enacted by amendment in the Code of Civil Procedure. It is true that the rules of procedure are only handmaid of justice and not its master, but the rules but its proper implementation would certainly advance the cause of justice. The Courts are over-burdened with cases and every day substantial time is lost in granting adjournments. Time has come that this melody is treated with even hands at all levels. Every one connected with administration of justice is deeply concerned with the mounting arrears and delay in disposal of the cases and it is high time that all concerned tried their best to see that the cases are not adjourned unnecessarily and at mere asking.

6. In this background, if it is seen that despite number of opportunities being given to the applicants, when the last opportunity was given on 21-7-1994 for filing the reply and the case was adjourned to 4-8-1994, when again on 4-8-1994 the counsel for the applicants prayed for time and the said prayer for adjournment was rejected, it cannot be said that the trial Court committed any error of jurisdiction or exercised jurisdiction illegally or with material irregularity. The exercise of jurisdiction in accordance with the procedure prescribed by law

cannot be said to be improper.

7. Consequently, no error of jurisdiction has been committed by the trial Court in rejecting the application moved by the applicants on 4-8-1994 for grant of adjournment. There is no merit in this civil revision application and it is dismissed in limine.

8. Revision dismissed.