

(1945) 06 BOM CK 0002

In the Bombay High Court

Case No : Civil Revision Application No. 593 of 1941

Jadavbai Narayandas

APPELLANT

Vs

Shrikisan

RESPONDENT

Date of Decision : 27-06-1945

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 1

Citation : AIR 1946 Bom 113 : (1945) 47 BOMLR 978

Hon'ble Judges : Lokur, J;Gajendragadkar, J

Bench : Division Bench

Judgement

Lokur, J.—This is an application in revision against an order passed by the Joint First Class Subordinate Judge at Sholapur in suit No. 343 of 1939 granting the plaintiff's application for adjournment of the hearing on condition that she should pay Rs. 600 to the defendant for his costs of the day. The plaintiff's family is one of the richest in Sholapur and she filed this suit against her adopted son for recovering past and future maintenance at the rate of Rs. 600 per month, a portion of the family wada for her residence and Rs. 10,000 for visiting holy places. The subject matter of the suit was valued at Rs. 86,400. The defendant was prepared to give her maintenance at the rate of Rs. 250 per month but nothing for her pilgrimage. The suit was filed on February 8, 1939, and was adjourned from time to time at the request of one party or the other. It was fixed for final hearing on February 22, 1941, but on that day one of the witnesses for the plaintiff was not present. She asked for an arrest warrant against that witness and got the suit adjourned to March 5, 1941. On that day the defendant was ready with his witnesses. The claim being hotly contested, the defendant had engaged, in addition to his local pleaders (Messrs. Mule and Paranjpe), an advocate (Mr. Dixit) and a counsel (Mr. Daphtary) from Bombay. Both of them were present in Court on that day and the defendant was prepared to go on with the suit. But the plaintiff was not present and her pleader made an application that as she was not well she was not able to attend the Court and that the hearing of the suit should be adjourned. In its order below the application the

lower Court expressed the view that the plaintiff's sickness was exaggerated and that her aim was to get an adjournment of the hearing as the defendant had engaged a counsel from Bombay. The application was opposed but the Court was inclined to allow a short time to the plaintiff. The lower Court then ascertained from Mr. Daphtary that he was paid Rs. 600 per day and adjourned the hearing of the suit on condition that the plaintiff should pay Rs. 600 to the defendant. It does not appear from the record that the plaintiff's pleader objected to that condition. But now it is contended on her behalf that the Court had no jurisdiction to impose such an onerous condition and that at the most it could have ordered her to pay the defendant's costs of the day, that is to say, his pleader's fees for a day (Rs. 15) and whatever the defendant had to spend in getting orders for re-attendance served on his witnesses.

2. In granting an adjournment under Order XVII, Rule 1, Sub-rule (1), of the Civil Procedure Code, the Court is empowered by Sub-rule (2) "to make such orders as it thinks fit with respect to the costs occasioned by the adjournment". The expression "occasioned by the adjournment" is deliberately used in order that the discretion of the Court should not be restricted to the taxable costs of the day. The principle underlying the sub-rule is that the party who is ready to proceed with the suit should be awarded such costs as can reasonably be held to be "occasioned by the adjournment", and as might reasonably compensate him for the expense incurred by reason of the adjournment. Of course the condition imposed should not be in the nature of a penalty or punishment to the party asking for adjournment, and hence the costs awarded should in no case exceed a sum commensurate with the expense, which, in the opinion of the Court, the party ready to proceed reasonably incurs as a result of the adjournment. On this principle the defendant who had not anticipated an adjournment on March 5, 1941, and had expected the suit to be heard on that day, had brought a counsel from Bombay at a cost of Rs. 600. That expense was wasted by the adjournment. In addition to Rs. 600 the defendant might have been awarded also the fees of the local pleaders and the advocate from Bombay, as well as the amount which he had to spend to secure the re-attendance of his witnesses on the next date of hearing. Looking to the stake involved in the suit, we think that the defendant was not unreasonable in incurring the expense of a counsel from Bombay, and the lower Court was right in requiring the plaintiff to pay his costs as a condition of the adjournment. We see no reason to interfere with the order of the lower Court. The rule is discharged with costs.