

(2011) 08 RAJ CK 0091

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7041 of 2010 and Civil Miscellaneous Stay Application No. 938 of 2010

Jagdish Prasad Sharma

APPELLANT

Vs

The Civil Judge (JD) and Others

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Citation : (2011) 08 RAJ CK 0091

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Bhagwati, J.—Challenge in this writ petition is to the order dated 31.3.2010 rendered by Civil Judge (Jr. Division), Lalsot, District Dausa, whereby the application filed by the Petitioner-Plaintiff seeking adjournment for his cross-examination was dismissed and the order dated 4.5.2010, whereby the application filed by the Petitioner-Plaintiff for recording his evidence had been dismissed.

2. Having heard the learned Counsel for the Petitioner and carefully scanned the relevant material on record including the impugned orders, it is noticed that the Petitioner-Plaintiff filed a suit for mandatory and permanent injunction against the Respondent-Defendant. On 7.3.2006, the learned trial court framed the issues and posted the matter for recording the Plaintiff's evidence, but he did not lead the evidence. On 7.11.2006, last opportunity was granted to the Plaintiff for leading evidence. Thereafter on 26.4.2007, an affidavit was filed by the Plaintiff-Petitioner, but he did not appear in evidence. Subsequently ample opportunity was granted to the Plaintiff-Petitioner for his appearance for cross-examination, but he did not appear in the court. On 18.7.2007, last opportunity was granted to the Petitioner-Plaintiff to appear in the court for his cross-examination, but he failed to appear and moved an application dated 31.3.2010 imploring the court to grant an adjournment as he was suffering from diarrhea.

It is relevant to record that earlier also, an application of the same nature stating that the Petitioner-Plaintiff was suffering from diarrhea was filed before the court on 1.11.2007. The learned trial court, having analyzed the entire facts and circumstances of the case, dismissed the application vide order dated 31.3.2010.

3. Thereafter, the Petitioner-Plaintiff again filed an application on 26.4.2010 imploring the Court to record his evidence. The learned trial court, vide its order dated 4.5.2010, dismissed the application.

4. It is relevant to point out that this Court vide order dated 29.7.2009 rendered in S.B. Civil Writ Petition No. 7499/2007, while granting an opportunity to the Petitioner-Plaintiff to bring all the witnesses before the court subject to the payment of cost of Rs. 2000/-, directed the learned trial court that Plaintiff's evidence would be recorded on the next date, already fixed and responsibility was fixed on the Plaintiff Petitioner to bring all the witnesses before the Court on the said date. It was further directed by this Court that no further opportunity would be granted to the Plaintiff.

5. From the impugned order dated 4.5.2010, it appears that despite the orders of this Court, no evidence was adduced by the Petitioner-Plaintiff before the trial court on 12.10.2009, the date already fixed in the matter before the trial court. The learned trial court, while taking a lenient view in the matter, granted one more opportunity to the Petitioner-Plaintiff on 16.12.2009 to lead his evidence on 9.2.2010, but no witness was produced on behalf of the Petitioner-Plaintiff. On 31.3.2010, last opportunity was granted to the Petitioner Plaintiff to lead his evidence, but no witness of the Petitioner-Plaintiff appeared in the court, resultantly the Plaintiff's evidence was closed.

6. The crux of the matter is that the Petitioner-Plaintiff has been grossly careless in leading evidence. Despite giving ample opportunity by the trial court, the Petitioner did not produce any witness. After closure of evidence, this Court also took the lenient view and directed the Petitioner to keep himself present and produce all the witnesses for evidence on the fixed date but the Petitioner did not show any respect to the order of this Court also. Under the garb of term "in the interest of justice", he cannot be permitted to abuse the process of court. He is found to have filed these applications luxuriously just with a view to keep the dying suit alive by hook or by crook, which tantamounts to apparent abuse of the process of law. Thus, the learned trial court is found to have rightly dismissed the applications filed by the Plaintiff-Petitioner.

7. For the reasons stated above, the writ petition filed by the Petitioner fails and the same being bereft of any merit deserves to be dismissed, which stands dismissed accordingly.

8. Consequent upon the dismissal of writ petition, the stay application, filed therewith, does not survive and that also stands dismissed.