

(2000) 02 OHC CK 0040
In the Orissa High Court
Case No : Misc. Appeal No. 67 of 1994

Orissa State Civil Supplies Corporation Ltd.

APPELLANT

Vs

Janardan Samal

RESPONDENT

Date of Decision : 25-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 1(2), Order 9 Rule 9

Citation : (2001) 92 CLT 549 : (2000) 90 CLT 572 : (2000) 1 OLR 677

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : D.C. Mohanty, for the Appellant; S.N. Satpathy, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—This appeal arises out of the order dated 3-11-1993 passed by the Subordinate Judge, Sundargarh in Misc. Case No. 45 of 1991. By the impugned order, the learned Subordinate Judge rejected the prayer for restoration of Money Suit No. 3 of 1984.

2. The facts of the case are as follows :--

Money Suit No. 3 of 1984 was filed by the appellant for realisation of Rs. 6,40,370/- from the the respondent. The said suit was filed on 3-3-1984 and was ready for hearing on 5-2-1990. It was, however, dismissed for default by order dated 20-9-1991. The appellant filed a petition under Order 9, Rule 9 of the CPC for restoration of the suit, which was registered as Misc. Case NO. 45 of 1991. But the same was rejected by the learned Subordinate Judge, Sundargarh by order dated 3-11-1993.

3. Learned counsel for the appellant submitted that the advocate appearing for the plaintiff-appellant in the trial court was absent on the date fixed for hearing on the suit due to his pre-engagement in another case at Paralakhemundi. Therefore, a petition for adjournment was filed on 19-9-1991, i. e. one day ahead of the date fixed. Therefore, the suit should not have been dismissed for

default.

4. A cursory glance at the order sheet of the Money Suit indicates that on 2-9-1991 the suit was posted for hearing. On that date, an application was filed on behalf of the plaintiff-appellant for adjournment on the ground that the advocate was to attend the Court of Tribunal at Bhubaneswar. On such prayer, the suit was adjourned to 20-9-1991 "as the last chance". Prior to that on a number of occasions, adjournments were prayed for by the plaintiff-appellant which were allowed. The plaintiff had taken several adjournments before the suit was ready, the plaintiff took a number of adjournments. Therefore, when the petition dated 19-9-1991 praying for adjournment on the ground that the advocate for the plaintiff had gone to Paralakhemundi to attend court in a part heard case was placed before the trial court on 20-9-1991. Keeping in view the earlier order passed on 2-9-1991, the conduct of the plaintiff in praying for repeated adjournments and the fact that the suit was a year old one lingering since 1984. It rejected the petition and called the suit for hearing. As nobody appeared on behalf of the plaintiff-appellant, the trial court dismissed the suit for default.

5. In the petition under Order 9, Rule 9 of the CPC for restoration of the suit, a ground regarding unavoidable inability of the legal retainer of the plaintiff to conduct the suit on 20-9-1991 was taken. The other ground was that the suit involves huge amount of money and the plaintiff would suffer irreparable loss if the suit were not restored. It was submitted that the above constituted sufficient reason for restoration of the suit as the non-appearance was not intentional. The defendant-respondent filed objection to the above petition. He brought the earlier order dated 2-9-1991 to the notice of the trial court wherein it was specifically mentioned that no further adjournment would be granted. The defendant also drew the attention of the trial court to the provisions of Order 17, Rule 1 (2) (c) of the Code of Civil Procedure, which reads as follows :--

"1. Court may grant time and adjourn the hearing-

(1). xx xx xx

(2). Costs of adjournment--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) xx xx xx

(b) xx xx xx

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

This proviso was substituted by section 68 of Act 104 of 1976 with effect from 1-2-1977. Considering the facts and circumstances of the case and the provision of law as aforesaid, the trial court dismissed the petition for restoration.

6. At the time of hearing of the present appeal, the respondent brought the following facts to the notice of this Court : --

The plaintiff had earlier filed Certificate Case and a Criminal Case and the respondent had moved this Court in O. J. C. Nos. 2313 and 2321 of 1983 for quashing of the same. The Certificate Cases were withdrawn. Then the appellant filed a case u/s 7 of the Essential Commodities Act against the respondent which ended in acquittal. The case was found to be mistake of law and fact. Thereafter the Money Suit was filed. The application of the respondent for inspection of certain documents was rejected by the trial court, for which he filed Civil Revision No. 131 of 1986 before this Hon"ble Court and this Court directed the trial Court be permit the respondent to inspect the documents. On 7-9-1990 the appellant filed a petition for adjournment which was dismissed. Against the said order the appellant filed Civil Revision No. 822 of 1990 and this Court directed for inspection of documents by 20-6-1991. According to the respondent, the appellant is pursuing the litigation with a view to harass him.

7. In this background, it is to be seen whether the present rejection of adjournment was just and proper. I have already quoted the relevant provision of the CPC which says that adjournment cannot be granted on the sole ground of the advocate of a party being engaged in another court. Inability of the pleader was, however, the only ground urged by the plaintiff in the petition for adjournment. Asking for an adjournment is not a matter of right and the Court has the discretion either to allow or to reject the said petition depending on various factors. In the present case, number of adjournments had been taken by the plaintiff-appellant prior to 2-9-1991 on the ground of engagement of its lawyer in other courts. Therefore, on 2-9-1991 while granting adjournment on such a prayer, it was made clear that no further adjournment would be granted on the date fixed, i.e., 20-9-1991. In spite of the above, on 19-9-1991 a petition was filed for adjourning the the suit, In view of the forewarning and since the suit was a year old one the trial court rejected the prayer called for suit for hearing and dismissed the same for default as there was no appearance on before of the plaintiff. Same grounds were also urged in the petition for restoration which the trial court did not accept and dismissed the petition. In view of the facts stated above, I am also of the opinion that there was no sufficient cause for non-appearance of the plaintiff appellant on 20-9-1991, and the trial court has rightly dismissed the petition for restoration.

8. Learned counsel for the parties cited some decisions in support of their respective submissions. However, I do not consider them very much essential for the present purpose in view of the provision under Order 17, Rule 1 (2)(c) of the Code of Civil Procedure, which clearly says that the fact that the pleader of a patty is engaged in another court shall not be a ground for adjournment.

9. For the reasons indicated above, there is no merit in the appeal. Which is accordingly dismissed.

10. Appeal dismissed.