

(1994) 09 GUJ CK 0005
In the Gujarat High Court

P.K. Agarwal, M.D., Madhuchandra Techno Chem Complex Pvt. Ltd. APPELLANT

Vs

J.H. Shaikh, Legal Officer, Gujarat Heavy Chemicals Ltd. and Another RESPONDENT

Date of Decision : 22-09-1994

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 309

Citation : (1995) 1 GLR 539

Hon'ble Judges : K.J. Vaidya, J

Bench : Single Bench

Judgement

K.J. Vaidya, J.—Today, as my learned Brother C.V. Jani, J. was not available due to his indisposed health, the provisional board dated 21-9-1994 and 22-9-1994 (earlier undated) containing in all 32 criminal matters were placed before me for final hearing. Accordingly, when in the first session - between 11-00 a.m. and 2-00 p.m. the matters after matters were serially called out, barring few exceptions, none of the learned Advocates appearing for the petitioners for whatever reasons were present! As a result thereof, Chopdar was sent with a list containing names of the learned Advocates appearing for the respective sides to inform them about their matters being called out. Thereafter, Sheristedar once again had a second round calling out the matters and since at that time also, it met with the same fate, this Court was constrained to keep back all the matters after recess with a view to give one more chance to the concerned learned Advocates in overall interest of the litigants and thereby the Justice. Unfortunately even after recess also, though the entire board was called out, none of the learned Advocates have been found to be present in the Court! This is simply self-exposing and astounding too!! Any way, in this view of the challenging situation, there is indeed no alternative left with this Court but to dismiss all the matters for default. It may be incidentally stated that yesterday also, this Court had the very same experience and still however, it restrained

itself from dismissing the matters for default simply because the new provisional board was notified at the last minute, at 11-00 a.m. In fact under such circumstances, it would indeed have been quite unjust, unfair and improper on the part of this Court to dismiss the matter for default as indeed the learned Advocates appearing for the petitioners can certainly make a grievance that they had no sufficient notice in advance to know about their matters having been notified in the Final Hearing Board! But that is precisely not the case today. It is indeed quite uncomfortable and unfortunate too that though the matters are notified quite sufficiently in advance, still however, for the reasons best known, not only the learned Advocates have remained absent but they appear to have forgotten even the elementary courtesy to be shown to the Court of mentioning personally and/or requesting some other learned friend Advocates to mention that their matters be either kept back or be adjourned to some further date. It is simply disheartening that even at the High Court level some of the learned Advocates appearing for either parties have started taking the Court proceedings quite lightly for granted. One can quite understand some such a thing happening once a while, wherein in absence of the learned Advocates even the Court would be quite liberal either to keep back the matter or to adjourn the same to some future date, but unfortunately, experience of this Court is little disheartening in as much as the liberal attitude shown in the past has instead improving the situation any further, has rather emboldened some of the learned Advocates to take undue liberty with Court to not to pay any heed to the notified Boards deteriorating the situation further ! Today also, casually had there been a question of absence of one or two learned Advocates when the matters were called out, this Court in its usual liberal way in all probability would have adjourned the same to some future date; but then at the cost of repetition, that is not the case today!! In fact, (i) if out of 32 matters, in one matter, the learned Advocate was absent, it could have been taken lightly as a casual lapse where without there being any intention on the part of the concerned learned Advocate to disrespect the Court proceedings he might have remained absent when his matter was called out, (ii) further, if by chance two or three learned Advocates had remained absent, then even, it could have still been taken as just a coincident to condone their absence, but to find as may as 14 learned Advocates absent at a time and that too twice in the first session and thereafter third time, after the recess also is something quite disturbing which I apprehend (may be wrong) is suggestive of probable chronic indiscipline gaining roots amongst some of the learned Advocates - a red-signal situation which requires to be immediately attended to and dealt with the reasonable sternness in the overall interest of Justice. I make it clear that this is not at all to suggest that whole Bar as such can be blamed for the said apprehended indiscipline; or that whole bar is such an indisciplined lot! Not the least, (emphasis supplied). If indeed had that been the situation, then the working of the Courts could have come to stand-still any time. This has not happened. Not only that but even speaking for those learned Advocates appearing in the present group of petitions (who were not present when their matters were repeatedly called out thrice during the day)

they perhaps may not be as blame-worthy as the indisciplined lot as the lapse committed by them might not be intentional or habitual one. Still however, such lapses whether intentional or not, giving rise to even little apprehension of indiscipline on the part of the learned Advocates, if is not seriously taken care of in the right earnest, it may prejudicially boomerang upon the precious public-time of the Court, public money involved and the most important still, the right of the litigants to get expeditious justice at the hands of the Court !! It is for these reasons only that hopefully indeed I deem it necessary to speak out the mind by making some observations so that the concerned learned Advocates may take note of the same and accordingly in future, try to conduct themselves in a way whereby matters are disposed of as expeditiously as possible and not delayed at least because their absence. To countenance the apprehended negligence on the part of the concerned learned Advocates lightly, would be perhaps allowing them to behave as irresponsibly as they may like, without any control, throwing to the winds; in the first instance, their duty towards the client (their pay-masters), in the second instance, their duty to the Court to punctually attend the proceedings more particularly when they have obtained some ad-interim relief against the opponents; and in the third instance, to keep up and aloft, the promise given in Article 21 of the Constitution regarding "Speedy Justice". This Court prima facie is of the view that mere dismissal of a matter for default is indeed not going to serve any purpose whatsoever or improve upon the deteriorating situation as the concerned learned Advocates very well know that after the matters are dismissed for default, the same would still be ordinarily restored as a matter of course on mere asking, if not for them, then atleast in the interest of their clients for whom they appear!! This too well-known weakness for justice of the Court in ultimately caring for the interest of litigants cannot be further indiscreetly allowed to be exploited at the cost of lapse on the part of the concerned learned Advocates which in turn would be at the further cost of or loss of precious public time when there is clamor and cry all-around that cases after cases are just piled up and justice delayed is justice denied! In this view of the importance and urgency of the matter, with a view to see that this easy indiscreet tendency of the learned Advocates of not remaining present before the Court when the matters are called out is not pampered any further some effective ways to meet with the situation are to be evolved. If that is just not done, not only the future of the administration of justice would seriously suffer to that extent but it will still further expose Court to unfortunate criticism that not only the learned Advocates are not interested in conducting the matters, but even the Courts taking up such matters are also relaxed and not that much keen, inclined and interested to proceed with the matter conniving at the situation ! When the entire "Administration of Justice" is reeling under the acute pressure of back-log of the cases and there is a cry all-around from the people that Justice delayed is Justice denied, something positive, effective, and purposeful is required to be done at the earliest in the overall public interest. Accordingly, three effective measures to meet with the situation in question, that immediately come to my mind at this stage are: (i) in case where the learned

Advocates for the petitioner are absent and the matters are dismissed for default, at that time, order as regard the ad-interim relief should also be vacated; (ii) not only that but the Office should be specifically directed to communicate immediately to the petitioners/respondent(s), as the case may be, that their matters have been "dismissed for default" on the ground of absence of their learned Advocate and that the interim relief is vacated; and (iii) whenever party approaches the Court for restoration of their matter, the reasonable cost; and in a given case, even the exemplary cost should be imposed as a condition precedent prior to the restoration. It is quite true that in all such matters of dismissal for default, the learned APP/AGP appearing for the State are not entitled to charge any fees as the matters) are not decided on merits but at the same time, the fact still remains that since the precious public time of the Court is lost, final hearing on merits gets unnecessarily delayed causing prejudice to the other side against the interim relief obtained and the public money spent by way of salaries to the Hon"ble Judges, Office Staff, stationery etc., is always paid from the Public Exchequer, which is usually drawn from the blood, toil, tears and sweat of the honest tax-payers, some cost serving as the future object lesson to defaulter side may be imposed.

2. The most important question that arises under such cases - Why indeed for the default committed by the learned Advocate in not remaining present in the Court when the matters are called out should turn into punishment to innocent public at large by taxing the honest tax-payers for no fault of theirs! It is precisely in this view of the matter that whenever the learned Advocates remain absent, and matters are dismissed for default, they should ordinarily be visited with costs and in a given case, even the exemplary cost. This can be done u/s 309 of the Code. In these matters also, the initial reaction of this Court was to impose exemplary cost so as to serve them as an object lesson to the concerned learned Advocates to mend their ways, in future, however, it has refrained from doing so, quite with a view to see that before taking some such stringent action, a reasonable opportunity by way of Notice should be given to the learned Advocates of the consequences of their remaining absent before the Court and mend their ways in future when the matters are called out. This judgment accordingly be treated as a notice whereby in future when the matters are dismissed for default, the Court would not be powerless to impose cost, whenever the learned Advocate appears for restoration.

3. In the result, these matters are dismissed for default. Interim relief vacated. Rule discharged. The office is directed to communicate this Order to the petitioners immediately at their address. The Office is further directed to send the writ forthwith. The restoration application, if filed, not to be placed till the writ is issued.