
(2017) 06 BOM CK 0118
In the Bombay High Court
Case No : 32 of 2017

Prafulla s/o Narhar Wagh, & Anr.

APPELLANT

Vs

Govind son of Narayan Pimpalkar

RESPONDENT

Date of Decision : 08-06-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 17 Rule 1](#)

Citation : (2017) 06 BOM CK 0118

Hon'ble Judges : S. B. Shukre

Bench : SINGLE BENCH

Advocate : Sanjay Patrikar

Judgement

1. Heard learned counsel for the applicants at length. None appears for the respondent. Admit. Taken up for final hearing pursuant to the order dated 29th March 2017.

2. By this revision application, legality and correctness of the order passed on 26.10.2016 below an adjournment application (exhibit 71) by the Civil Judge, Senior Division, Nagpur in Special Civil Suit No. 850 of 2009 has been questioned.

3. Shri Patrikar, learned counsel for the applicants has taken me through the series of applications filed for adjourning the suit by the respondent which are forming part of paper book of this revision application. These applications are dated 17.6.2016 (exhibit 59), dated 30.8.2016 (exhibit 62), dated 20.9.2016 (exhibit 63D), dated 6.10.2016 (exhibit 65) and dated 21.10.2016 (exhibit 68). All these applications were filed by the respondent for seeking adjournment. First application (exhibit 59) was filed on the ground of nonavailability of the respondent in town as he was on pilgrimage. Second application (exhibit 62) was filed on the ground that the respondent was suffering from viral fever. Subsequent applications (exhibits 63D, 65 and 68) were also filed on the same ground as illness of the respondent. No medical certificates were filed and no effort was made by respondent to demonstrate that the ground taken in all these

applications was genuine. The trial Court, it appears, was extremely kind to the respondent/plaintiff in allowing all his applications despite his showing no inclination to support the ground taken by respondent in these applications. Application (exhibit 63D) was not opposed, but a prayer was made by the applicant for imposing costs of Rs. 5000/upon the respondent. The order was passed allowing the said application, by way of last chance, subject to payment of meagre costs of Rs. 200/.

4. One would think that once last chance was granted, the Court would be careful enough not to further adjourn the matter as there is no question of giving any more chance after last chance has been granted. But, the trial Court was kind enough to the respondent and chose to grant him further last chance when it allowed subsequent application (exhibit 65) subject to payment of costs of Rs. 300/. This time, the trial Court gave a direction to the respondent that if he did not make himself available, appropriate order will be passed. With such a direction in place, one would be rest assured that on plaintiff's failure to appear on the next date the "appropriate order" will be the dismissal of suit. However, that was not to be as the orders passed on subsequent dates disclose.

5. Such an attitude of the trial Court only emboldened the respondent to be even more brazen in seeking adjournments as he filed yet another application on 21.10.2016 giving the same ground as the earlier one. The trial Court allowed this application also giving the same direction that if the plaintiff (present respondent) did not make himself available before the Court for cross-examination, the suit would be dismissed.

6. It appears, the respondent had complete idea what the trial Court would do to his suit even if he filed yet another application for adjournment and trial Court it appears from the order impugned in this revision application, which is the order passed below application for grant of adjournment (exhibit 71) dated 26.10.2016, did not disappoint the respondent. The trial Court allowed even this application by only observing that the adjournment was being granted as a last chance subject to payment of costs of Rs. 500/with a direction, in case of failure, appropriate orders will be passed. All these orders passed by the trial Court in the absence of any proof being produced before it in support of ground of illness taken in the adjournment applications only exhibit complete disregard of the mandate of the provisions of Order XVII, Rule 1 of the Code of Civil Procedure. Time and again this Court as well as the Hon'ble Apex Court have held that adjournments should not be granted on the mere asking, but on "justifiable cause". The Apex Court in its judgment delivered in Civil Appeal No. 7532 of 2011 (M/s Shiv Cotex v. Tirgun Auto Plast P. Ltd. & ors) on 30th August 2011 has observed-

" When we say "justifiable cause" what we mean to say is, a cause which is not only "sufficient cause" as contemplated in subrule (1) of order XVII CPC but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling

necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the court and such like cause."

7. Besides above, it is equally well settled law that sufficient cause is something which is beyond the control of the party seeking adjournment and certainly the Advocate being busy in another Court is not a circumstance which is beyond the control of such party as held by this Court in the case of Dhanraj Lilaram Motwani & anr v. Rajendra Kumar Dayachand Jain & ors reported in AIR 1996 Bombay 3.

8. However, as stated earlier, the impugned order ignores these wellsettled principles of law. With regret, I may add that the impugned order turns a blind eye to the own orders of the trial Court when the trial Court categorically observed at least on two occasions i.e. on 6.10.2016 and 21.10.2016 that appropriate orders will be passed or suit will be dismissed.

9. The trial Court, instead of following law settled by the Hon"ble Apex Court and following the spirit of its own earlier orders, has granted adjournment by the impugned order and, therefore, such an order would have to be held as manifestly perverse as well as contrary to the settled principles of law. Such an order must go and the conduct of the respondent would necessitate passing of further order of dismissal of suit.

10. Application is allowed with costs. The impugned order is quashed and set aside. Adjournment application (exhibit 71) stands rejected. Suit stands dismissed with costs.