

(2005) 07 AHC CK 0265
In the Allahabad High Court
Case No : C.M.W.P. No. 29571 of 2000

Raj Bahadur and Others

APPELLANT

Vs

Commissioner, Agra Division and Others

RESPONDENT

Date of Decision : 12-07-2005

Acts Referred:

Citation : (2005) 4 AWC 3321

Hon'ble Judges : Sanjay Misra, J; Amitava Lala, J

Bench : Division Bench

Advocate : N.S. Chaudhary and Anshu Chaudhary, for the Appellant; K.R. Singh Jadaun, S.C., for the Respondent

Judgement

Amitava Lala and Sanjay Misra, JJ.—This High Court possess unique system of obtaining adjournments on account of purported illness. One can handover a slip to the officer of the Court and gets adjournment as a matter of course. No matter how many occasion it is. This is the fourth occasion when illness slip has been produced in such manner. So far as the first, second and third illness slips are concerned, we have already granted time making certain observations so that one can engage fresh counsel or make alternative arrangement in the meantime particularly when a counsel seems to be perpetually ill on the basis of the illness slips. Observation was made by the Court irrespective of engagement of more than one counsel in the matter. In spite of the same if time is sought in fourth occasion then the Court cannot have any other alternative but to proceed with the matter. We cannot have any conflict with the judgment of the Supreme Court in Rais Ahmad Vs. State of U.P. and Others, Such judgment speaks about tradition of the Court to which we cannot have any difference of opinion. Leaving aside that part, factually solitary absence of the learned Counsel on the day of disposal of the matter in merit and further dismissal of the restoration application in connection thereto was the subject matter therein. Can it be said factual position is similar with that matter. Our answer is "No". Observation of the Supreme Court is made for the purpose of convenience of the Bench and Bar and

in respect of cordial relationship amongst themselves but not for their inconvenience. In spite of best effort if inconvenience is made to another set of counsels who are eager to get early disposal of the matters, one cannot take advantage of such Supreme Court judgment. If no check and balance is made it will be treated to be greatest amount of abuse of process of Court of law. Court runs on two prospectives. Either it will run for the ends of the justice or it will run to prevent the abuse of process of Court of law. Therefore this Court feels when one is perpetually ill time to be given to take the alternative measure without making any departure from the principle as laid down by the Supreme Court. In the occasion, where despite giving directions and/or making observations by the Court no one become careful, the Court will have to treat the same as an abuse of process of Court of law. In such case Court can very well ignore the illness slip to prevent the abuse of process of Court of law and proceed with the matter. Every one has first duty towards the Courts of law, second duty towards the litigants and third duty towards Bar. Therefore third duty in the garb of "illness slip" cannot supersede first and second duties. In further it is to be remembered that not only the Supreme Court but also all the High Courts are keen to dispose of the matters as many as possible at the earliest. This is the order of the day. Under such circumstances, this Court cannot take any contrary stand on the basis of solitary case standing on a different fact situation. It is to be remembered that justice is not one way traffic. It is to be done upon both the litigating parties. If the justice is rendered to one on the basis of illness slip, it may cause injustice to others unless, of course, it is evidently proved. Normally, we have no practice to call for medical certificates of a counsel. According to the Court of law oral submissions or the illness slip of a counsel is good enough because Court keeps trust upon the learned Counsels. They are part and parcel of the institution not only as officers of the Court but also as ministers of the Courts equally with the Judges. Therefore, we can call upon such ministers to discharge their first duty to the Court in the proper manner. We hope and trust that the members of the Bar will be able to understand the gravity of the situation and cooperate with the Court. It is to be remembered that constitutionally we are bound about right vis-a-vis duty. We should not forget our duty. When the Court had shown leniency and thereafter prescribed a formula by giving adjournments on number of occasions, Court can also expect that the matter will be disposed of at the earliest and necessary co-operation from the members of the Bar will come to that extent. One should not be forgetful that by putting illness slip indefinitely, he is causing difficulty to his own fellow members at first. Interference of the Court of law comes later on. Unless and until we maintain ethics in discharging judicial functions both by the members of the Bench and Bar, glory of the High Court cannot be maintained. On the other hand, if the fictitious illness slips are repeatedly taken as granted, the same will be mockery of the judicial system.

2. Under such circumstances, we think it proper that copy of this order be forwarded to the President and Secretary of the Bar Association and Advocates"

Association for the purpose of effective circulation of the order.

3. However, the matter will be placed on 26th July, 2005, for effective disposal irrespective of any application or applications of the similar nature for which longest possible time is given hereunder.