

(2011) 12 RAJ CK 0048

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3610 of 2005, Civil Miscellaneous Stay Application No. 3181 of 2005 with Civil Writ Petition No. 7040 of 2004 and Civil Miscellaneous Stay Application No. 6054 of 2004

Rajasthan State Industrial Development and Investment Corporation Ltd.

APPELLANT

Vs

Gopi (since deceased) through L.Rs. and Others

RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 2, Order 17 Rule 1, 100
Constitution of India, 1950 — Article 227

Citation : (2012) 4 RLW 3288

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Advocate : Ajeet Bhandari, for the Appellant;

Final Decision : Dismissed

Judgement

Mahesh Bhagwati, J.—Since both the aforesaid writ petitions have arisen out of one order dated 3rd April, 1999, passed by the learned Additional Civil Judge (Jr. Div.), No. 1, Jaipur District, Jaipur, both the writ petitions have been heard together and are being disposed of by this common order. The petitioner-defendant Rajasthan State Industrial Development & Investment Corporation Ltd. Jaipur (hereinafter referred in short as "RIICO"), has beseeched to quash and set aside the order dated 3rd April, 1999, whereby the learned Additional Civil Judge closed the evidence of the petitioner-defendant and dismissed his application filed under Order 13 Rule 2 of CPC and gainsaid to take the documents on record.

2. In this case, plaintiffs-respondents nos. 1 and 2 are found to have filed a suit for declaration and injunction against the petitioner-defendant "RIICO" on 23rd July, 1998. During the pendency of the suit, after closure of plaintiffs' evidence on 10th July, 1998, the case was, for the first time fixed for defendant's

evidence on 24th July, 1998. The petitioner-defendant was afforded ample opportunity to produce the witnesses, but he failed to do so. Resultantly, the learned trial court closed the defendant's evidence and adjourned the case for hearing final arguments. On 29th January, 1999, the petitioner-defendant filed an application imploring the court to re-open the defendant's evidence and filed another application under Order 13 Rule 2 of CPC praying to take the documents on record. The learned trial court dismissed the defendant's prayer. Aggrieved with the said order dated 29th January, 1999, the petitioner-defendant has invoked extra-ordinary jurisdiction under Article 227 of the Constitution by way of filing the instant writ petition.

3. Learned counsel for the petitioner canvassed that albeit, the case has been pending trial since, 1983, but in the interest of justice, it is necessary for the petitioner-defendant to produce evidence to defend his case. The petitioner has endeavoured to explain the reason for not producing the witnesses on date so fixed by the court. Learned counsel for the petitioner canvassed that on 29th January, 1999, one Senior D.G.M. Shri Harkawat was to appear for evidence on behalf of petitioner-defendant, but on account of his remaining busy in an important meeting, he could not appear before the lunch, but when he reached the court at 2:15 p.m. he was informed that the evidence of defendant had been closed. Prior to this date, on two dates of hearing, the petitioner had to go to Jodhpur to attend his old and sick mother. These were the compelling reasons which prevented the witness from appearing in the court. But, the learned trial court did not appreciate all these facts and closed the defendant's evidence sans assigning any cogent reason. Hence, in the interest of justice, he may be afforded one and the last opportunity to produce all the witnesses on one day.

4. None is present for the respondents-plaintiffs.

5. Having reflected over the submissions made by the learned counsel for the petitioner and carefully scanned the relevant material on record, it is revealed that on 10th July, 1998, when the respondents-plaintiffs' evidence was closed, the case was for the first time adjourned to 24th July, 1998 for defendant's evidence. On that day, no witness was present in the court. Thereafter, it was adjourned to 11th September, 1998, 5th December, 1998, 11th December, 1998, 5th January, 1999 and 29th January, 1999, but on none of these dates, not a single witness was present. The learned trial court is found to have observed that neither the petitioner-defendant had filed any list of witnesses nor disclosed as to who shall be produced in evidence on their behalf. The petitioner-defendant was granted ample opportunity to produce the witnesses. The court granted last opportunity and adjourned the case for evidence as to costs also. Despite that, the petitioner-defendant did not care to produce even a single witness. It is revealed that the learned trial court granted more than three adjournments to the defendants for its evidence, whereas, cap provided in proviso to Order 17 Rule 1 of CPC was to grant adjournments not more than three times to a party during hearing of the suit. The party to the suit is not at liberty to proceed with

the trial at its leisure and pleasure and the defendant had no right to determine when the evidence would be led in by him. The hearing of the suit cannot be left on the mercy of the parties.

6. The Hon"ble Apex Court has consistently deprecated this leisurely practice of the parties in very strong words, in the case of Shiv Cotex Vs. Tirgun Auto Plast P. Ltd. and Others, . The Hon"ble Apex Court has held thus:-

16. No litigant has a right to abuse the procedure provided in the CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system. It is true that cap on adjournments to a party during the hearing of the suit provided in proviso to Order XVII, Rule 1, CPC is not mandatory and in a suitable case, on justifiable cause, the court may grant more than three adjournments to a party for its evidence but ordinarily the cap provided in the proviso to Order XVII, Rule 1, CPC should be maintained. When we say "justifiable cause" what we mean to say is, a cause which is not only "sufficient cause" as contemplated in sub-rule (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. The list is only illustrative and not exhaustive. However, the absence of the lawyer or his non-availability because of professional work in other court or elsewhere or on the ground of strike call or the change of a lawyer or the continuous illness of the lawyer (the party whom he represents must then make alternative arrangement well in advance) or similar grounds will not justify more than three adjournments to a party during the hearing of the suit. The past conduct of a party in the conduct of the proceedings is an important circumstance which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit - whether plaintiff or defendant - must co-operate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril. Insofar as present case is concerned, if the stakes were high, the plaintiff ought to have been more serious and vigilant in prosecuting the suit and producing its evidence. If despite three opportunities, no evidence was let in by the plaintiff, in our view, it deserved no sympathy in second appeal in exercise of power u/s 100, CPC. We find no justification at all for the High Court in upsetting the concurrent judgment of the courts below. The High Court was clearly in error in giving the plaintiff an opportunity to produce evidence when no justification for that course existed.

7. If viewed the case of the petitioner-defendant, in the light of the aforesaid

judgment of the Hon''ble Apex Court, it is found that the learned trial court had granted more than three adjournments to the petitioner-defendant to produce the witnesses, but the petitioner did not care to produce even a single witness in evidence. Not only that he did not even file the list of witnesses and the court did not know as to how many witnesses and who were to be examined? It is very relevant to record that the suit has been pending in the court since, 1983, and the impugned order was passed by the learned trial court way back on 29th January, 1999, which was impugned in civil revision. After the amendment in the CPC, the instant writ petition was filed and the same has been pending since the year 2004. There has been no progress in the suit on account of there being stay granted by this Court on 25th October, 2004. The learned trial court rightly closed the evidence of the petitioner-defendant by the detailed impugned order. The impugned order is found to be just and proper and is found to have suffered from no infirmity.

8. Second writ petition is with regard to dismissing the application filed under Order 13 Rule 2 of CPC. The learned trial court while deciding this application, observed that since the evidence of the defendant was closed, there was no need to take the documents on record and thus, dismissed the said application. I do not find any perversity in the said order with regard to dismissal of the application under Order 13 Rule 2 of CPC also.

9. It is relevant to note that the scope of Article 227 of the Constitution is very limited. The Hon''ble Apex Court has consistently held in plethora of cases that the extra-ordinary jurisdiction under Article 227 of the Constitution can be invoked by the High Court only when the impugned order is found to be perverse, contrary to material or it results in manifesting injustice. It has also been repeatedly held by the Hon''ble Apex Court that the High Court while exercising extra-ordinary jurisdiction should escape from interfering with the impugned orders of the courts below and such powers should be exercised sparingly and not in routine. It is also settled law that the High Court should be very slow in upsetting the pure finding of facts.

10. These petitions have been filed under Article 227 of the Constitution of India. In the case of Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil, , their Lordships of Hon''ble Apex Court have held that the power under Article 227 of the Constitution of India is a reserved and exceptional power for judicial intervention to be exercised not merely for the grant of relief in any even of the case, but only to be directed for the promotion of public confidence in the administration of justice. It has been held that the power is unfettered, but subject to high degree of judicial discipline and interference is to be kept at the minimum.

11. For the reasons stated above, both the writ petitions fail and the same being bereft of any merit stand dismissed. Consequent upon the dismissal of the writ petitions, the stay applications do not survive and the same also stand dismissed.