
(2015) 07 MP CK 0041
In the Madhya Pradesh High Court
Case No : Writ Petition No. 7557 of 2015

Raju Rajak

APPELLANT

Vs

Jokulal

RESPONDENT

Date of Decision : 07-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 1, Order 17 Rule 17, Order 17 Rule 2, Order 17 Rule 3(b), Order 43 Rule 1(c)
Constitution of India, 1950 — Article 227

Citation : (2015) 07 MP CK 0041

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : A.M. Shukla, Learned Counsel, for the Appellant

Final Decision : Dismissed

Judgement

Sanjay Yadav, J—Heard on admission.

2. Vide present petition under Article 227 of the Constitution of India, petitioners-plaintiffs call in question following orders -

(i) order-dated 8.5.2012 passed by Second Civil Judge Class II Jabalpur in Civil Suit No. 56-A/2009;

(ii) order-dated 30.10.2013 passed by Second Civil Judge Class II Jabalpur in MJC (Civil) No. 16/2012 and

(iii) order-dated 17.3.2015 passed by Nineteenth Additional District Judge, Jabalpur in M.A. No. 30/2014.

3. That, a civil suit seeking permanent injunction and removal of unauthorized construction in respect of Bungalow No. 107 (old) New No. 380 to 397 Nazul Block No. 33 Plot No. 2 situated at Victoria Road Jabalpur. During pendency of the said suit, petitioners sought impleadment of legal representatives of sole plaintiff on 21.7.2011. Plaintiffs however, despite of adjournment granted on

20.10.2011, 13.12.2011, 12.1.2012, 16.2.2012, 22.3.2012 and 8.5.2012 did not incorporate name of legal representatives of sole plaintiff. As the petitioners failed to comply with the order of the Court on 8.5.2012, trial Court proceeded to pass an order invoking its powers under Order 17 Rule 3(b) of the Code of Civil Procedure, 1908 and accordingly, dismissed the suit under Order 17 Rule 2 CPC.

4. Petitioners filed an application under Order 9 Rule 9 CPC for setting aside the said order-dated 8.5.2012 on the ground that the date of case was not noted by the counsel as a result whereof he could not pursue the same. However, taking into consideration the fact that the petitioners did not file any affidavit of his counsel to substantiate the claim that it was because of mistake of the counsel that amendments could not be incorporated, trial Court vide order-dated 30.10.2013 declined to interfere with the order of dismissal by rejecting application under Order 9 Rule 9 CPC by further taking into consideration the law laid down by the Supreme Court in Shiv Cotex Vs. Tirgun Auto Plast P. Ltd. and Others, (2011) 4 BC 125 : (2011) 9 JT 552 : (2011) 4 RCR(Civil) 807 : (2011) 9 SCALE 500 : (2011) 10 SCR 787 . Aggrieved, petitioners preferred an appeal under Order 43 Rule 1(c) CPC against the said order of dismissal of application under Order 9 Rule 9 CPC. The Appellate Court also concurred with the finding by the trial Court, holding -

5. Though it is contended on behalf of petitioner that both the Courts have grossly erred in declining to entertain application under Order 9 Rule 9 CPC; however, taking into consideration the evidence on record, contention put-forth by learned counsel for the petitioner does not leave much impression as it is the petitioners who have to blame themselves in not complying with the Court's order within the time stipulated. In this context, reference can be had of the decision in Shiv Cotex (supra) wherein it is held -

"15. It is sad, but true, that the litigants - seek and the courts - grant adjournments at the drop of the hat. In the cases where the judges are little pro-active and refuse to accede to the requests of unnecessary adjournments, the litigants deploy all sorts of methods in protracting the litigation. It is not surprising that civil disputes drag on and on. The misplaced sympathy and indulgence by the appellate and revisional courts compound the malady further. The case in hand is a case of such misplaced sympathy. It is high time that courts become sensitive to delays in justice delivery system and realize that adjournments do dent the efficacy of judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. The courts, particularly trial courts, must ensure that on every date of hearing, effective progress takes place in the suit.

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."

6. In view whereof, findings arrived at by both the Courts cannot be faulted with as would warrant any indulgence.

7. Consequently, petition fails and is dismissed. No costs.