
(2007) 12 AHC CK 0072

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 61869 of 2007

R.K.Agrawal

APPELLANT

Vs

Judge, Small Causes Court, Allahabad And Another

RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 1, Order 8 Rule 1

Citation : (2007) 12 AHC CK 0072

Hon'ble Judges : Sunil Ambwani, J

Final Decision : Disposed Of

Judgement

Sunil Ambwani, J.

1. Heard Smt. Rama GoeJ, learned Counsel for the petitioner.
2. She states that she is not pressing prayer No. 1 and has confine I this writ petition for expeditious disposal of SCC Suit No. 74 of 2004, pending at the stage of deciding the application filed by the plaintiff not to accept the written statement filed by the respondent after the lime period prescribed under Order VI1I1, Rule 1, C.P.C.
3. A perusal of the order sheet would show that the Judge, Small Causes Court, Allahabad is fixing the dates only for the purposes of adjourning the case. He has granted several adjournments to the defendants ignoring the mandate of Order XVII, Rule 1 of C.P.C. that the Court shall not grant more than three adjournments to any party except for the reasons to be recorded in writing for unavoidable causes. On nine dates, either the presiding officer was on leave or the Court did not have time to hear the matter.
4. The order dated 8.5.2006 shows that the case was adjourned on the ground that the Bench Secretary was on leave. It is unfortunate that the Court has to adjourn the cases on such a ground. If the Bench Secretary was on leave, the Court could have directed the Clerk in his office to work or requested the District Judge to provide for alternative arrangement. It is expected that such order will

not be passed in future.

5. The Code of Civil Procedure, 1908 provides for adjournment by the Court at any stage of the suit, for reasons to be recorded in writing. This power to adjourn the case under Order XVII, Rule 1 of the Code of Civil Procedure, 1908, given to serve the principles of natural justice, is often misused by the Counsels of both the parties as well as the Court. The cases are adjourned for reasons, which can be avoided and are often not recorded in the orders. On most of the occasions the cases are adjourned without any application filed by either of the parties causing long delays, leading to mounting arrears, which has virtually crippled the legal system. Many a times the adjournments are given by the Court only to manage the case diary cause list. On such occasions, when the Courts have large number of cases on the day, adjournments are given for asking to managing the work. The Courts do not manage their roster in such a manner that only a reasonable number of cases are fixed on any day. The Counsels very often seek adjournments not to provide opportunity to defend to their clients. Sometimes these adjournments are sought as they are over busy, which is mostly a case with senior Counsels and on many other occasions for flimsy reasons. The Counsels practicing in law Courts have devised thousands of ways to get the cases adjourned. Some Counsels are known as experts in adjournments and are engaged only to delay the cases. The misuse of the power of adjournment has virtually put the entire administration of justice to ransom.

6. The Civil Procedure Code was exhaustively amended by Act No. 46 of 1999 and enforced by Act No. 22 of 2002 w.e.f. 1.7.2002, inserting a proviso to Order XVII, Rule 1 providing that the adjournments shall not be granted more than three times to a party during hearing of the suit, and in every, such case subrule (2) provides that the Court shall fix a day for the further hearing of the suit and shall make such orders as to costs occasioned by the adjournment or such higher costs as the Court deems fit, provided further that when the hearing has commenced it shall be continued from day to day until all witnesses in attendance have been examined, unless the Court finds for exceptional reasons to be recorded by it the adjournment of the hearing beyond the following day is "necessary. Clause (b) of the proviso to subrule (2) provides that no adjournment shall be granted at the request of a party except where the circumstances are beyond the control of that party. Subclause (c) provides that the fact that pleader of a party is engaged in another Court shall not be a ground for adjournment. Where illness of a Counsel or his inability to conduct the case for any reason is put forward as ground for adjournment, subclause (d) provides that the Court shall not grant adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time. Subclause (e) provides that where witness is present but party or his pleader is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such order as it thinks dispensing with the examination in chief or cross-examination of the witnesses as the case may be.

7. Order XVII, Rule 1, C.P.C. provides for complete code for grant of adjournment. In practice, however, these mandatory provisions are allowed more in breach than observance, to the conscious exercise undertaken by the Parliament for containing the adjournments.

8. With regard to award of costs for adjournments on avoidable causes the Supreme Court observed in Salem Advocate Bar Association, Tamil Nadu v. Union of India. 2005 (34) AIC 249 (SC).

"So far as awarding of costs at the time of judgment is concerned, awarding of costs must be treated generally as mandatory inasmuch as the liberal attitude of the Courts in directing the parties to bear their own costs had led the parties to file a number of frivolous cases in the Courts or to raise frivolous and unnecessary issues. Costs should invariably follow the event. Where a party succeeds ultimately on one issue or point but loses on number of other issues or points, which were unnecessarily raised. Costs must be appropriately apportioned. Special reasons must be assigned in costs are not being awarded. Costs should be assessed according to rule in force. If any of the parties has unreasonably protracted the proceedings, the judge should consider exercising discretion to impose exemplary costs after taking into account the expense incurred for the purpose of attendance on the adjourned dates."

9. The writ petition is accordingly disposed of with the direction to decide the matter very expeditiously and in any case within a period of six months, strictly adhering to the schedule of deciding the case, provided for each stage of the proceedings in the amended Civil Procedure Code. The Court shall not grant adjournment unless the circumstances are beyond the control of the party. In case of illness of the pleader or inability to conduct the case, the Court will follow Clause (d) of subrule (2) of Order XVII, C.P.C. In all such cases, the adjournments shall only be granted for recording reasons and imposing costs, which shall not be less than Rs. 500 per adjournment. If a party takes more than three adjournments in a suit and seeks adjournment on any of the grounds given in subrule (2), the Court shall impose costs of Rs. 1000 per adjournment or above, taking into account the valuation of the suit. In such case half the costs shall be directed to be deposited with the Sr. Administrative Officer of the Judgeship in the "Contingency Account" of the Court to be utilised for the Court Management at the discretion of the District Judge for which he shall maintain an account and submit the same to the High Court. This order shall be carried out for adjournment in all the cases.