
(2011) 08 AHC CK 0303
In the Allahabad High Court
Case No : C.M.W.P. No. 46124 of 2011

Shambhu and others

APPELLANT

Vs

State of UP. and others

RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Citation : (2012) 1 AWC 824 : (2011) 114 RD 517

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amreshwar Pratap Sahi, J.—Heard learned Counsel for the petitioner.

2. The contention raised by the petitioner is that he has been non-suited on absolutely erroneous considerations and his evidence has been shut out for no valid reason. An application moved for recall of the order closing his evidence has been rejected and the revision filed against the same has also been dismissed.

3. I have perused the order-sheet which is Annexure-7 to the writ petition. The petitioner - plaintiff was given opportunity to lead evidence on 26.8.2003, 15.10.2003, 17.11.2003, 16.12.2003, 13.1.2004 after the Suit was instituted. Thereafter, a substitution application was pending which came to be allowed. Again the petitioner was continuously given several dates for leading evidence namely 13.12.2004, 10.1.2005, 7.2.2005, 5.5.2005, 30.7.2005, 30.11.2005, 30.1.2006, 23.2.2006, 29.4.2006 and 15.5.2006.

4. In view of these 17 dates having been fixed, the contention of the learned Counsel for the petitioner that the plaintiff had not been given any ample opportunity and the absence of his Lawyer should have been condoned does not appeal to reason. The petitioners, apart from the excuse of the learned Counsels absence on the last date fixed, i.e. on 15.5.2006, have not given any explanation about the non-production of evidence on the previous sixteen dates on which adjournment had been granted. This luxury of indulgence by the Court, without

any costs, was also not expected yet the petitioners inspite of the leniency shown by the Court appear to have taken it casually. This in my opinion is taking undue advantage of the leverage given by the authority.

5. Paras 27 and 28 of the Revenue Court Manual deal with adjournments that are quoted below:--

27. Adjournments.--When the hearing of evidence has once begun the hearing of the suit or application should be continued from day to day until all the witnesses in attendance have been examined unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

[Note.--In drawing up the cause list under Rule 49, cases should be placed with due regard to their complexity to avoid break in the continuity of hearing and adjournments, once a case is started.]

28. Instructions to be followed in dealing with adjournments--In dealing with applications for adjournments the Courts shall be guided by the following instructions:

(1) A date for hearing once fixed shall, so far as practicable, be strictly adhered to and no adjournment granted except for good cause. In no case, when one of the parties is ready to proceed should an adjournment be granted at the request of the opposite party; except on condition that a sum commensurate with the costs which, in the opinion of the Court, the party ready to proceed will have to incur owing to the adjournment, be paid as and when directed by the Court to the party ready to proceed, and bear his cost in any event. In all cases when an adjournment is granted the Court shall record a proceeding stating his reasons for granting the adjournment and such proceeding shall be filed with the record.

(2) The mere fact that a party is through carelessness or negligence, not ready to go on which a suit, is not itself a good cause for adjournment.

(3) The rules regarding the filing of documents and exhibits should be strictly observed and parties have no right to ask for adjournment in order to obtain copies of documents if by the exercise of diligence they could have procured them in time.

(4) A hearing should not be adjourned to call for a written report from an officer of the Court unless such report is absolutely necessary.

6. The aforesaid provisions also indicate that they are in tune with the existing provisions of Order IX of C.P.C. which also place restrictions to limit the grant of adjournments unnecessarily, particularly where any leniency shown is abused.

7. The finding recorded by the Court below is clearly to the effect that the plaintiffs are not taking any interest as is evident from the past conduct from 2003 onwards.

8. The writ petition, therefore, has no merits and is dismissed.