(1997) 05 MP CK 0026

In the Madhya Pradesh High Court

Case No : C.R. No. 729 of 1997

Shantanu Punit Ram Sahu APPELLANT

Vs

Suraj Devji Bhai Mandore RESPONDENT

Date of Decision : 03-05-1997

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 17 Rule 1(2), 151

Citation : (1998) 2 MPLJ 142

Hon'ble Judges : P.N.S. Chauhan, J

Bench : Single Bench

Advocate : T.K. Modh, for the Appellant; No appearance, for the Respondent

Judgement

D.P.S. Chauhan, J.

The revision is directed against the order dated 5-3-1997 passed on an application moved by the defendant for adjournment of the case on the ground that his counsel was ill. On that date plaintiff himself was not present nor his witnesses were present. This fact has no relevance if the court granted adjournment as the court was satisfied regarding sufficiency of the cause and fixed another date in the case.

Under Order 17, Sub-rule (2) of Rule 1 of the Code of Civil Procedure, by means of the proviso, a rider is fixed in regard to the fixation of the date for further hearing in the suit. Clause (d) of Sub-rule (2) says that where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another court, is put forward as a ground for adjournment, the court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time. Since the prayer is granted it means that the court was satisfied that the party applied for adjournment could not have engaged another pleader in time.

The imposition of the cost is for the purpose of inconvenience caused either to the party or to the witness on account of adjournment. In the present case, as is stated, that neither the plaintiff nor the witnesses of the plaintiff were present in the case. It was not a case where such imposition of cost was warranted. It was a case where no cost should have been imposed as the imposition of the cost is always in the discretion of the court and the court is supposed to look into the circumstances, reasonableness and the requirement of the imposition of the cost on account of the adjournment. It is not a case here that frequent adjournment are being taken. It is not a case here that plea for adjournment was not entertainable. Though such an order is not covered u/s 151 of the Code but in exercise of suo motu power I consider that the order so far as it relates imposition of the cost of Rs. 800/- itself deserves to be set aside.

In view of above, by maintaining the order dated 5-3-1997, the order relating to imposition of cost of Rs. 800/- is set aside.

The revision is accordingly disposed of.

