
(1973) 01 AHC CK 0034
In the Allahabad High Court
Case No : Civil Revision No. 643 of 1970

Smt. Ram Piyari	Vs	APPELLANT
Lala Ram Narain and Others		RESPONDENT

Date of Decision : 02-01-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 1(2)

Citation : AIR 1973 All 227 : (1973) 43 AWR 276

Hon'ble Judges : Hari Swarup, J

Bench : Single Bench

Advocate : R.N. Bhalla, for the Appellant; S.N. Varma, A.N. Varma and Bashir Ahmad, for the Respondent

Final Decision : Allowed

Judgement

Hari Swarup, J.—This revision is directed against the order of 2nd March, 1970. Along with the revision two orders were filed. One is in respect of refusal to permit certain documents to be brought on the record. The second is an order granting adjournment on certain conditions. Learned counsel for the petitioner has stated that he confines the revision to the second order.

2. The plaintiff had filed an application supported by an affidavit for adjournment of the case so that he may file a revision against the order refusing the application for bringing on record certain documents. The learned Civil Judge while granting the application passed the following order:--

"Heard. Adjourned to 14-4-70 for F.H. on payment of Rupees Three Hundred as today's adjournment costs to be paid by 12 A.M. on that date, failing which the suit shall automatically stand dismissed for default and non-prosecution. No more adjournment. Any stay order (certified copy) be filed before that date."

3. It is permissible to grant a conditional order of adjournment. The condition may be about payment of costs. Costs normally are such as the other side has incurred, which may be about the diet money, etc., to be paid to the witnesses or

such amounts and the counsel's fee. Beyond that if an amount is awarded it will not be costs. Learned Civil Judge has given no reason for directing the payment of Rs. 300/- as costs of the adjournment. In the circumstances, the award of such a heavy amount is nothing but an imposition in the nature of penalty. This inference finds support from the further order passed by the learned Civil Judge to the effect that on nonpayment of the amount the suit shall automatically stand dismissed for default and non-prosecution. It was open to the court to refuse the adjournment and to proceed with the case or to grant the adjournment on payment of reasonable costs. It was not open and, in any case, it was not proper in the circumstances of the case, to pass an order for an automatic dismissal of the suit.

4. As the condition imposed by the learned Civil Judge is in the nature of penalty not permissible by law, the order has to go.

5. In the result, the revision is allowed. The order dated 22-3-1970 passed on the application for adjournment is set aside. The case shall now proceed, and shall be decided in accordance with law. The parties will bear their own costs.