

(2011) 04 SHI CK 0263
In the High Court Of Himachal Pradesh
Case No : C.M.P.M.O. No. 80 of 2011

Sonu Chawla @ Rakesh Chawla and Another	APPELLANT
Vs	
Smt. Krishna Chawla and Others	RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2011) 04 SHI CK 0263

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—By means of this petition, the Petitioner has challenged the order dated 21.2.2011 whereby the evidence of the Petitioners-Defendants has been closed and the matter was listed for arguments. Normally, this Court in such cases take a more liberal view of the matter, but here the conduct of the Petitioners-Defendants themselves has dis-entitled them from any relief from this Court.

2. It is not disputed that on 30.12.2010 the matter was listed before the Court. Third opportunity was granted to the Petitioners-Defendants to lead their evidence. They were not present and prayed for an adjournment. The Civil Judge (Sr. Division), Shimla granted last opportunity and directed that the entire evidence be produced on 21.2.2011, failing which the evidence shall be deemed to be closed by an order of the Court.

3. It appears that the Petitioners-Defendants took steps to summon the witnesses and on 21.2.2011 five witnesses, namely S/Sh. Shashi Shirshu, C.P. Sood, Khub Ram, Amar Singh and Sukhwinder Singh were present.

4. The case was called three times before lunch hours, but none appeared on behalf of the present Petitioners. Thereafter the case was taken up after lunch. Again none appeared and the case was again adjourned. When the case was

called for the last time, Sh. K.R. Kashypa, Advocate appeared vice counsel for Defendants 2a to 2c and 3a. He pleaded no instructions on their behalf. Thereafter the learned Trial Court closed the evidence of the contesting Defendants and fixed the case for 11.3.2011 for arguments.

5. On 11.3.2011 a new counsel appeared on behalf of the Petitioners-Defendants and filed an application for adjournment. In the said application, it was stated that the counsel had been engaged only on that day and he is not in a position to argue the case. It was indirectly averred that the evidence of the Petitioners-Defendants had been wrongly closed, though there was no direct allegation in this regard. The prayer made in the application was that the civil suit may be adjourned only for 10 days, so that the counsel may be able to collect the case file and documents for arguing the present case. This adjournment was allowed on 11th March, 2011. On 12th March, 2011 the present petition was prepared wherein the order dated 21.2.2011 was challenged and was filed in this Court on 14.3.2011.

6. The conduct of the Petitioners-Defendants is writ large. On one pretext or the other they have been delaying the matter. When the entire evidence of the Petitioners-Defendants was present, the Petitioners themselves should have present since they should have been examined before their witnesses. They did not choose to be present and even their counsel did not have the courtesy to appear before the Court till the late hours in the evening and then he pleaded no instructions. It is obvious that this was an attempt to somehow get the matter adjourned.

7. Even more damaging to the Petitioners-Defendants is the fact that on 11th March, 2011 when counsel moved an application for adjournment he only stated that the matter be adjourned to enable him to collect the case file and documents, so that he is in a position to argue the case. He did not inform the Court that he wanted time to challenge the order dated 21.2.2011. Every litigant has a right to challenge the order of any Court, but the party and its counsel must have the courage to state true facts. What prevented the Petitioners-Defendants from stating in their application that the matter be adjourned because they want to challenge the order dated 21.2.2011. The adjournment was sought on the ground that new counsel has been engaged and he has to prepare the case and within 2 days the petition was filed in this Court challenging the order dated 21.2.2011.

8. From the copies of the orders annexed with the petition, it is obvious that these orders had been received by the Petitioners-Defendants on 8th March, 2011. It is thus obvious that they had already knew what had transpired on 21.2.2011.

9. For the aforesaid reasons, I find that this is not a case where I should exercise my supervisory jurisdiction under Article 227 of the Constitution of India. The petition is, therefore, dismissed. No costs.