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"Arresting of Time through Adjournments under Code of Civil Procedure, 1908"

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Abstract

Adjournments are sought for and granted by the Courts as a matter of course. Proceedings in the suits are not allowed to move much less concluded by one of the parties interested in delay. The spirit of providing justice expeditiously is shattered and stalled by non-observance of the provisions contained in Order XVII of the CPC, and as a result thereof, it takes years and years before the proceedings are concluded before the trial Courts.

Keywords: Adjournments; CPC; Delay; Order XVII

INTRODUCTION

Order XVII of the Civil Procedure Code, 1908 (hereinafter referred to as CPC) contains provision for adjournment of suits. The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing. It is provided that no such adjournments shall be granted more than three times to a party during the hearing of the suit. In every such case 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 may direct. The space for the exercise of judicial discretion allows for unnecessary delays. However, the several mandatory time limits imposed on the plaintiff and defendant, at each stage of the litigation, helps in speeding up the litigation process. One of the major banes of the judicial system, i.e, unnecessary adjournment can be dealt with effectively with the limit imposed as also the provision as to costs including punitive costs. It cannot be denied that the provision of Order XVII of the CPC is more followed in breach than in compliance

AMENDMENTS OF ORDER XVII OF CPC

CPC was amended by the Parliament by the Amending Acts of 1999 and 2002 to arrest the time wasting tendencies. The Courts were over-burdened with cases and every day substantial time was lost in granting adjournments. Everyone connected with administration of justice was deeply concerned with the mounting arrears and delay in disposal of the cases. Therefore, after the necessary amendments were made in the Code, the interest of justice demanded that the proceedings before the Civil Courts are concluded as expeditiously as possible and effective work is done in every case on each date of hearing.

AMENDED PROVISIONS OF CPC

It is not enough if a cause is shown for adjournment but it must also be a sufficient cause.

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The number of adjournment is limited to 3, the exception being circumstances beyond the control of the party.

While adjourning the case court cannot do it indefinitely but must fix the next date of hearing.

Adjournment is not automatic and the court is bound to make orders as to cost occasioned by the adjournment.

Court is also empowered to make higher cost as the court deem fit apart from the cost occasioned by the adjournment.

After the commencement of hearing, of the suit the day-to-day hearing is mandatory, till all witnesses are examined, and if adjournment beyond the following day is necessary it can be done only for the exceptional reasons that need to be recorded.

CONSTITUTIONAL VALIDITY OF THE AMENDED PROVISIONS

The constitutional validity of the amendments made in the CPC by the Amending Acts of 1999 and 2002 was challenged in Salem Advocate Bar Association, T.N v. Union of India [2] which was rejected by the Supreme Court.

However, a Committee headed by a Former Judge of the Supreme Court and Chairman, Law Commission of India (Justice M. Jagannatha Rao) was constituted to formulate the modalities and also to ensure that the amendments become effective and result in quicker dispensation of justice. The Committee, after considering the grievances relating to the amendments, submitted a detailed Report.

The said Report was again considered by the Supreme Court in the same Salem Advocate Bar Association case. [3] While examining the provisions of Order XVII of the Code, relating to adjournment, the Supreme Court observed: — (SCC pp. 367–368)

While examining the scope of the proviso to Order 17 Rule 1(1) that more than three adjournments shall not be granted, it is to be kept in view that the proviso to Order 17 Rule 1(2) incorporating clauses (a) to (e) by Act 104 of 1976 has been retained. Clause (b) stipulates that no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party. The proviso to Order 17 Rule 1(1) and Order 17 Rule 1(2) has to be read together. So read, Order 17 does not forbid grant of adjournment where the circumstances are beyond the control of the party. In such a case, there is no restriction on the number of adjournments to be granted. It cannot be said that even if the circumstances are beyond the control of a party, after having obtained the third adjournment, no further adjournment would be granted. There may be cases beyond the control of a party despite the party having obtained three adjournments. For instance, a party

[2] (2003) 1 S.C.C 49
[3] (2005) 6 S.C.C 344

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may be suddenly hospitalised on account of some serious ailment or there may be serious accident or some act of God leading to devastation. It cannot be said that though the circumstances may be beyond the control of a party, further adjournment cannot be granted because of the restriction of three adjournments as provided in the proviso to Order 17 Rule1.

In some extreme cases, it may become necessary to grant adjournment despite the fact that three adjournments have already been granted (take the example of the Bhopal gas tragedy, Gujarat earthquake and riots, and devastation on account of the tsunami). Ultimately, it would depend upon the facts and circumstances of each case, on the basis whereof the court would decide to grant or refuse adjournment. The provision for costs and higher costs has been made because of the practice having been developed to award only nominal costs even when adjournment on payment of costs is granted. Ordinarily, where the costs or higher costs are awarded, the same should be realistic, and as far as possible actual costs that had to be incurred by the other party shall be awarded where the adjournment is found to be avoidable, but is being granted on account of either negligence or casual approach of a party or is being sought to delay the progress of the case or on any such reason. Further, to save the proviso to Order 17 Rule 1(1) from the vice of Article 14 of the Constitution, it is necessary to read it down so as not to take away the discretion of the court in the extreme hard cases noted above.[4]

The limitation of three adjournments would not apply where adjournment is to be granted on account of circumstances which are beyond the control of a party. Even in cases which may not strictly come within the category of circumstances beyond the control of a party, the court by resorting to the provision of higher costs which can also include punitive costs in the discretion of the court, adjournment beyond three can be granted having regard to the injustice that may result on refusal thereof, with reference to peculiar facts of a case. We may, however, add that grant of any adjournment, let alone the first, second or third adjournment is not a right of a party. The grant of adjournment by a court has to be on a party showing special and extraordinary circumstances. It cannot be in routine. While considering the prayer for grant of adjournment, it is necessary to keep in mind the legislative intent to restrict the grant of adjournments.

JUDICIAL PRECEDENTS DETERMINING THE NATURE OF ADJOURNMENTS

The Allahabad High Court in the case of Ramji Lal Sharma V. Civil Judge, Allahabad & Ors has clarified that seeking unnecessary adjournment on non-existent grounds with the oblique motive to delay the trial of the Suit are instances of contumacious conduct, tending to interfere with administration of justice, inviting action of contempt.[5]

The Allahabad High Court in another case of Surendra Kumar & Anr. V. Rajendra Kumar Agarwal has stated that procrastinating proceedings by seeking adjournment deserves

[4] SCC pp. 367–368
[5] AIR 1988 All. 143.

deprecation but at the same time sufficiency of reasons for seeking adjournment requires to be examined.[6]

The Supreme Court in the case of Chief General Manager, Telecom & Anr. Vs. G. Mohan Prasad & Ors. has stated that undoubtedly, taking unnecessary adjournments causes problems to the Court and inconvenience to the other party, but courts should adopt an attitude not to penalize the party on that count.[7]

In State Bank of India V. Kumari Chandra Govindji [8] the Supreme Court considered the scope of Order 17 Rule 1 of the CPC and observed as under

"*In ascertaining whether a party had reasonable opportunity to put forward his case or not, one should not ordinarily go beyond the date on which the adjournment is sought for. The earlier adjournment, if any, granted would certainly be for reasonable ground and that aspect need not be once again examined if on the date on which adjournment is sought for the party concerned has a reasonable ground. The mere fact that in the adjournments had been sought for could not be of any materiality. If the adjournment had been sought for on flimsy grounds, the same would have been rejected*."

Adjournment cannot be sought as a matter of right; not even on the ground that the counsel has no instruction from his client.[9] In Nirankar Nath Wahi v. Fifth Additional District Judge, Moradabad [10] the Apex Court held that a party should not be permitted to abuse the process of the Court but at the same time, a party should be given a reasonable time, considering the dimensions of the matter bearing in mind that justice must also appears to have been done and a short adjournment with a degree of understanding should be granted to make an alternative arrangement. However, the case is to be examined in a facts and circumstances involved therein and under no circumstances the process of the Court should be permitted to be abused by any litigant.

The Apex Court in Bashir Ahmed v. Mehmood Hussain Shah [11] while considering the provisions of Order XVII Rule 1(2) proviso (d) C.P.C., which provides that illness of a counsel cannot be a ground for adjournment unless the Court is satisfied that the party applying for adjournment could not have engaged another counsel in time, held as under

Therefore, the Court is enjoined to satisfy itself in that behalf. If the party engages another counsel as indicated therein, then the need for further adjournment would be obviated. The words ―in time‖ would indicate that at least reasonable time may be given when a counsel suddenly becomes unwell. There would be reasonable time for the parties to make alternative arrangement, when sufficient time intervenes between the last date of adjournment and the

[6] AIR 1990 All. 49.
[7] (1999) 6 SCC 67.
[8] (2000) 8 SCC 532.
[9] Mary Alvares v. Roy Alvares; (2004) 9 SCC 578.
[10] AIR 1984 SC 1268.
[11] AIR 1995 SC 1857

next date of trial. In such a case, adjournment on the ground of counsel's ill health could be refused and the party would bear the responsibility for his failure to make alternative arrangements.

Similarly, in Shibanand Mukherjee v. Gopal Chandra De [12] the Supreme Court dealt with the similar issue of adjournment, wherein the case was dismissed by the High Court refusing the adjournment and the application for restoration was also rejected. The Apex Court restored the matter with the condition that a sum of Rs. 50,000/- would be paid to the other side as compensation. In the said case also, the lawyer did not appear because of ailment and had sent the illness slip.

In Syed Naseem Ahmed V. Mohd. Abdul Hakeem [13], the Apex Court held that inability of lawyer to attend the Court cannot be a ground for adjournment and dismissed the appeal without adjourning the case further.

In Sheela Devi & Ors. v. Narbada Dev [14] the Supreme Court held that breach of faith on the part of the counsel falsely claiming illness as ground of inability to attend the Court is a professional misconduct and sending such false illness has been deprecated and further action was directed to be taken against the lawyer.

In the case of the Shiv Cotex v. Trigun Auto Plast P.Ltd. & Ors.[15] it was held that the cap on adjournments to a party during the hearing of the suit provided in the proviso to Order 17 Rule 1 CPC is not mandatory and in suitable case, on justifiable cause, the Court may grant more than three adjournments to ap-arty for its evidence keeping in view the cap provided in proviso to Order 17 Rule 1.

CONCLUSION

Thus, from the above, the legal proposition emerges that adjournment cannot be sought by a litigant in a routine manner. It must be a bonafide attempt, on behalf of the party. Illness of the counsel cannot be a ground of seeking adjournment. In certain cases, Court can grant short time so that an alternative arrangement is made. It cannot be a means of Bench hunting or dilatory tactics. Where there are more than one counsel, illness of one counsel is no ground to adjourn the case.

[12] (2005) 11 SCC 557
[13] (2005) 12 SCC 302
[14] (2005) 13 SCC 432
[15] (2011) 10 SCR 787