SUPREME COURT OF INDIA

Gayathri

Vs.

M.Girish

SLP(Civil)No···of 2016

(Dipak Misra and R.F.Nariman,JJ.,)

27.07.2016

JUDGMENT

Dipak Misra,J.,

1. If a case ever exposed the maladroit efforts of a litigant to indulge in abuse of the process of Court, the present one is a resplendent example. The factual narration, to which we shall advert to immediately hereinafter, would limpidly show that the defendant-petitioner has endeavoured very hard to master the art of adjournment and on occasions having been successful become quite ambitious. And the ambition had no bounds; it could reach the Everestine heights or put it differently, could engulf the entire Pacific Ocean.

2. The factual expose' as is evincible from the impugned orders, the respondent filed OS No.1712 of 2007 for recovery of possession and damages. The general power of attorney holder through which the plaintiff prosecuted the litigation was examined on 13.1.2009 in chief and it was completed on 12.9.2012. It is worthy to note here that for examination-in-chief, the witness was constrained to come to court on seven occasions. Thereafter, the defendant filed an interlocutory application under Order XVII Rules 1 and 2 of the Code of Civil Procedure seeking adjournment of the matter for one month on the ground that the mother of the senior counsel was unwell. The matter stood adjourned. As the facts would further unfold, the defendant filed I.A. No.9 under the very same provision seeking adjournment on the ground that the counsel engaged by him was not keeping well. I.A. No.10 was filed seeking adjournment for one month on the ground that the senior counsel was out of station. I.A. No.11 was filed on the plea that the defendant was unable to get certified copies of 'P' series documents. The fifth application, i.e., IA No.12 was filed on the similar ground. The incurable habit continued and I.A. no.13 was filed seeking adjournment on the ground that the counsel was busy in the marriage ceremony of a relative. And, the matter stood adjourned. The proceedings in the suit got arrested as if "time" had been arrested. Despite filing of so many interlocutory applications, the defendant remained indefatigable with obsessed consistency and again filed I.A. No.14 on the ground that certified copies were required by her. Thereafter, I.A. No.15 was preferred to recall PW-1 for

cross-examination on the foundation that on the previous occasion, the senior counsel who was engaged by the defendant was busy in some other court. The learned trial Judge, hoping that all his owe would be over and the disease of adjournment affecting the marrows of litigation would be kept at bay, allowed the said application on 27.5.2013 subject to payment of costs of Rs.800/-.

3. We must state here that the learned trial Judge was in total illusion, for the defendant-petitioner had some other design in mind. We are prompted to say so, had the story ended there, possibly the trial court's assessment of phenomenon would have been correct and the matter would not have travelled to this Court. But it was not to be so. In spite of the court granting adjournment subject to payment of costs, the defendant chose not to cross-examine the witness and continued filing interlocutory applications forming the subject matters of I.A. Nos.16, 17, 19, 20 and 21 and the ordeal of the plaintiff, a septuagenarian, continued. The difficulties faced by an old man when he is compelled to come to Court so many times to give evidence can be well imagined. In spite of this, the trial court adjourned the matter to 3.10.2015. Notwithstanding the unwarranted indulgence shown, the defendant remained adamant and thought it wise not to participate in the suit. On 3.10.2015, though the witness was present, neither the defendant nor her counsel turned up. The trial Court posted the suit for defendant's evidence and adjourned the matter. After the aforesaid order came to be passed, on 22.2.2016 IA No.22 of 2016 was filed seeking further cross-examination of the plaintiff. The said prayer was declined by the trial court with costs of Rs.1,000/-.

4. Grieved by the aforesaid order passed by the learned trial Judge, the defendant preferred, W.P. No.36022 of 2016 (GM-CPC) before the High Court of Karnataka at Bangalore and the learned Single Judge, vide order dated 14.07.2016 recorded the facts, placed reliance on *K.K. Velusamy v. N. Palanisamy* [1] and held as follows :-

> "6. The impugned order is a narration of classic case of abuse of process of law. Trial Court has rejected the said application by narrating in detail the conduct of petitioner defendant. Hence, there is no error in the order passed by the Trial Court."
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> Eventually, the High Court dismissed the writ petition without imposition of any costs.

5. We have heard, Mr. Ashwin K. Kotemath, learned counsel for the petitioner. We have narrated the facts in great detail so that what we have said in the beginning with regard to the abuse of the process of court gets fortified.

6. In K.K. Velusamy (supra), while dealing with the power of the Court under Order XVIII Rule 17, this Court held that:-

> "9. Order 18 Rule 17 of the Code enables the court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness

under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. [Vide *Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate - 2009 (4) SCC 410]*.

10. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in- chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo moto, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions."

And again:-

"19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.

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21. Ideally, the recording of evidence should be continuous, followed by arguments, without any gap. Courts should constantly endeavour to follow such a time schedule. The amended Code expects them to do so. If that is done, applications for adjournments, re-opening, recalling, or interim measures could be avoided. The more the period of pendency, the more the number of interlocutory applications which in turn add to the period of pendency."

7. We have referred to the said paragraphs to show the purpose of filing an application under Order XVIII Rule 17 of the Code. We may add that though in the said decision this Court

allowed the appeals in part, the fact situation, the conduct of the party and the grievance agitated were different. The Court also thought it apposite to add a word of caution and also laid down that if the application is mischievous or frivolous, it is desirable to reject the application with costs.

8. In this context, we may fruitfully refer to Bagai Construction Through its proprietor *Lalit Bagai v. Gupta Building Material Store*[2] . In the said case the Court had expressed its concern about the order passed by the High Court whereby it had allowed the application preferred under Order XVIII Rule 17 that was rejected by the trial court on the ground that there was no acceptable reason to entertain the prayer. Be it stated, this Court set aside the order passed by the High Court.

9. In the said case, it has also been held that it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. That apart, it has also been held that the Courts should constantly endeavour to follow such a time schedule so that the purpose of amendments brought in the Code of Civil Procedure are not defeated. Painfully, the Court observed:-

> In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 CPC."

10. In the case at hand, as we have stated hereinbefore, the examination-in-chief continued for long and the matter was adjourned seven times. The defendant sought adjournment after adjournment for cross-examination on some pretext or the other which are really not entertainable in law. But the trial Court eventually granted permission subject to payment of costs. Regardless of the allowance extended, the defendant stood embedded on his adamantine platform and prayed for adjournment as if it was his right to seek adjournment on any ground whatsoever and on any circumstance. The non-con¬cern of the defendant-petitioner shown towards the proceedings of the Court is absolutely manifest. The disregard shown to the plaintiff's age is also visible from the marathon of interlocutory applications filed. A counsel appearing for a litigant has to have institutional re¬sponsibility. The Code of Civil Procedure so command. Applications are not to be filed on the grounds which we have referred to herein¬above and that too in such a brazen and obtrusive manner. It is wholly

reprehensible. The law does not countenance it and, if we per¬mit ourselves to say so, the professional ethics decries such practice. It is because such acts are against the majesty of law.

11. In this context, we may profitable reproduce a passage from *Shiv Cotex v. Tirgun Auto Plast (P) Ltd.* [3] wherein it has been stated that it is sad, but true, that the litigants seek − and the courts grant −adjournments at the drop of a hat. In the cases where the Judges are little proactive and refuse to accede to the requests of unnecessary adjournments, the litigants deploy all sorts of methods in protracting the litigation. The court has further laid down that it is not surprising that civil disputes drag on and on. The misplaced sympathy and indulgence by the appellate and revisional courts compound the malady further.

12. In *Noor Mohammed v. Jethanand*[4] commenting on the delay caused due to dilatory tactics adopted by the parties, the Court was compelled to say:-

> "In a democratic set-up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citi¬zenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly. Fragmentation of faith has the effect-po- tentiality to bring in a state of cataclysm where jus¬tice may become a casualty. A litigant expects a rea-soned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the altar of reasons. Timely delivery of justice keeps the faith ingrained and establishes the sus¬tained stability. Access to speedy justice is regarded as a human right which is deeply rooted in the foundational concept of democracy and such a right is not only the creation of law but also a natural right. This right can be fully ripened by the requisite commitment of all concerned with the system. It cannot be regarded as a facet of Utopianism be¬cause such a thought is likely to make the right a mirage losing the centrality of purpose. Therefore, whoever has a role to play in the justice-dispensa- tion system cannot be allowed to remotely conceive of a casual approach."

And, again:-

> "Thus, from the aforesaid, it is clear as day that ev¬eryone involved in the system of dispensation of jus¬tice has to inspire the confidence of the common man in the effectiveness of the judicial system. Sus¬tenance of faith has to be treated as spinal sans sympathy or indulgence. If someone considers the task to be Herculean, the same has to be performed with solemnity, for faith is the "elan vital" of our system."

13. In the case at hand, it can indubitably be stated that the defendant-petitioner has acted in a manner to cause colossal insult to justice and to the concept of speedy disposal of civil litigation. We are constrained to say the virus of seeking adjournment has to be controlled. The saying of Gita "Awake! Arise! Oh Partha" is apt here to be stated for guidance of trial courts.

14. In view of the aforesaid analysis, we decline to entertain the special leave petition and dismiss it with costs which is assessed at Rs.50,000/- (Rupees fifty thousand only). The costs shall be paid to the State Legal Services Authority, Karnataka. The said amount shall be deposited before the trial Court within eight weeks hence, which shall do the needful to transfer it to the State Legal Services Authority. If the amount is not deposited, the right of defence to examine its witnesses shall stand foreclosed.

Judgment Referred.

[1]*(2011) 11 SCC 0275*
[2]*AIR 2013 SC 1849*
[3]*(2011) 9 SCC 0678*
[4]*AIR 2013 SC 1217*