

Chander Singh Vs. Chottulal

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Court : Rajasthan

Decided On : Jan-18-1994

Reported in : AIR1994Raj186; 1994(1)WLC493; 1994(1)WLN31

Judge : Milap Chandra Jain, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 17, Rule 1 - Order 18, Rule 2

Appeal No. : Civil Revision Petition No. 867 of 1993

Appellant : Chander Singh

Respondent : Chottulal

Advocate for Def. : M.L. Chhangani, Adv.

Advocate for Pet/Ap. : M.L. Kala, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

1. This revision petition has been filed against the order of the Additional Munsif No. 2, Jodhpur dated November 9, 1993 by which he has closed the evidence of the defendant-petitioner and has fixed the case for final arguments. The facts of the case giving rise to this revision petition may be summarised thus.

2. The plaintiff-non-petitioner has filed a suit for recovery of possession of the disputed premises against the defendant petitioner. On February 15, 1992, the plaintiff closed his evidence and April 9, 1992 was fixed for the evidence of the defendant. Thereafter, several dates were fixed for the same purpose. On November 9, 1993, the impugned order was passed.

3. It has been contended by the learned counsel for the defendant that the same day (9-11-1993) an application was moved before the trial court that the defendant's witness Kailash Chandra could not come as the plaintiff had threatened him with dire consequences if he appeared before the trial court to give his statement and has prayed that an opportunity be given for examining him on commission but the learned trial court did not care to pass any order on it. He further contended that the defendant again moved an application on December 6, 1993 for opening his evidence and giving an opportunity to produce his remaining witnesses and also to grant time to file a revision petition in the High Court and to bring stay order therefrom but the learned trial court simply gave time to file revision petition and did not give an opportunity to produce evidence. He also contended that the trial court acted with material irregularity and illegality in the exercise of its jurisdiction in closing the defendant's evidence. He lastly contended that if the defendant is not given an opportunity to produce this remaining witnesses, he would suffer an irreparable injury.

4. In reply, it has been contended by the learned counsel for the plaintiff-non-petitioner that the learned trial court had fixed innumerable dates for the defendant's evidence and ultimately it had no alternative but to close the defendant's evidence. He also contended that the said application was not moved before the impugned order was passed on November 9, 1993 and it contained false allegations. He lastly contended that Kailash Chandra is not at all a material witness.

5. There is no substance in the revision petition. It has simply been moved to further delay the disposal of the suit. In compliance with the order dated December 21, 1993 of this Court, the defendant petitioner filed a certified copy of the entire order-sheet of the suit. It shows that the plaintiff closed his evidence on February

15, 1992, keeping his right to produce evidence in rebuttal and April 9, 1992 was fixed for defendant's evidence. Thereafter, (1) 29-5-1992, (2) 27-8-1992. (3) 4-9-1992, (4) 18-9-1992, (5) 7-10-1992, (6) 10-12-1992, (7) 21-1-1993, (8) 23-3-1993, (9) 14-4-1993, (10) 14-5-1993, (11) 31-5-1993, (12) 19-7-1993, (13) 3-8-1993, (14) 1-9-1993, (15) 7-9-1993, (16) 27-9-1993, (17) 14-10-1993, (18) 25-10-1993, and (19) 9-11-1993 were fixed for defendant's evidence, in between these dates, several other dates were also fixed for disposal of application moved by the defendant-petitioner under Order 13, Rule 2 and Order 6 Rule 17, C.P.C. He was also granted time to bring stay order from the Court in revisions to be filed against the orders passed on the said applications. It is clear from the order-sheet of the case that the learned trial court repeatedly adjourned the case in utter disregard of the provisions of Order 17, Rule 1, C.P.C. Its provisos (b) and (c) run as under:--

'(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party,

(c) the fact that the pleader of a party is engaged in another Court shall not be a ground for adjournment.'

Such liberal attitude of the trial courts is mainly responsible for the huge arrears of cases and inordinate delay in their disposal. The learned trial court should have closed the defendant's evidence much earlier. It had acted illegally in granting said adjournments to the defendant. It has not acted illegally or with material irregularity in the exercise of its jurisdiction in any manner in passing the impugned order.

6. During the arguments, the learned counsel for the defendant-petitioner could not satisfy the court that Kailash Chandra was a material witness and his evidence was necessary. He was summoned to prove a receipt which could have been proved by the defendant himself or by putting it before the previous owner of the suit premises when his statement was recorded.

7. The learned trial court also granted adjournments to the defendant-petitioner to file revision petition in this court and to bring stay order. It is being noticed that parties interested in delaying the disposal of the cases repeatedly seek and get

adjournments on the ground that no order has yet been passed on their revision petitions while they themselves do not get them listed for admission by not removing defects which they intentionally leave in them. On the contrary, parties interested in getting immediate orders of this Court on their urgent applications mention them at the commencement of the day and this Court gets them listed and pass orders the same day. The trial court should not have granted adjournments on such a ground.

8. It is also being noticed that the trial courts simply mention in their orders closing evidence that enough opportunity have already been given or several dates have already been fixed for the evidence. The dates fixed in the case for the evidence of that particular party and adjournments sought and given to him are not specified in the order. The party approaching this Court shows during arguments the order-sheets of the dates on which the Presiding Officers themselves were absent from court either on leave or otherwise and of the dates on which the adjournments were granted at the instance of the opponents. As such an adjournment had to be granted in this case to the defendant-petitioner to file a certified copy of the entire order-sheet. He filed it after two more adjournments. If the dates fixed for the defendant's evidence and adjournments granted on such dates at his instance would have been specified in the impugned order, the defendant would not have been directed to produce a certified copy of the entire order-sheet and the revision petition would have been disposed of earlier.

9. Accordingly, the revision petition is dismissed with costs.