

BASHIR AHMED
v.
MEHMOOD HUSSAIN SHAH.

MARCH 20, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Civil Procedure Code—Order 17, Rule 1, Sub-rules (1) and (2)—Adjournment—When can be granted and on what conditions.

Civil Procedure code—Proviso(d) to order 17 Rule 1(2)—Interpretation of "in time"—Reasonable time to engage another counsel should be given.

Suit for ejection filed by the plaintiff was adjourned from time to time. On 8.8.94, due to lawyers' strike the matter was adjourned to 9.8.94. The counsel appearing for the appellant became ill and therefore, the appellant prayed the court on 9.8.94 for adjournment and agreed to pay cost. The request of the appellant was declined and as the appellant was unable to cross-examine the witness, the court ordered forfeiture of cross-examination.

Appellant filed revision petition before the High Court which was dismissed.

Hence, this appeal by special leave.

Allowing the appeal, this court

HELD: 1. Order 17 Rule 1 indicates that protraction of trial of the suit should not be encouraged and the court shall try the suit as expeditiously as possible. If the adjournment is occasioned on any sufficient ground, then it may, in an appropriate case, adjourn the matter to a shorter date asking the party seeking adjournment to pay costs incurred by the party who got the witnesses produced and was ready to proceed with trial. [814-G]

2 (a) The words "in time" in clause (d) of the proviso to sub rule (2) of order 17 Rule 2 indicates 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 next date of trial. In such a case, adjournment on the ground of counsel's ill health can be refused and the party would bear responsibility for his failure to make alternative arrangements. [815-B]

(b) The court was not right in refusing to adjourn the matter at least for the next day as the counsel for the appellant had to cross-examine the respondent-plaintiff. Unless there is time for the new counsel to be engaged for application of his mind to pleadings, issues framed the evidence already on record, it would be difficult, for him to proceed with the cross-examination on the spur of moment. [815-G-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4035 of 1995.

From the Judgment and Order dated 8.9.94 of the Jammu & Kashmir High Court in C.R. No. 118 of 1994.

S.P. Singh and Ashok Mathur for the Appellant.

M.L. Bhat, Anant Palli and Ms. Purnima Bhat Kak for the Respondent.

The following Order of the Court was delivered:

Leave granted.

We have heard counsel on both sides. From the record, it would appear that a suit for ejection was filed on October 3, 1988 and the matter was adjourned from time to time on one count or the other. On 8.8.94, while the plaintiff was present in person, due to death of an advocate, the advocates went on strike. As a consequence, the matter was adjourned to 9.8.94. It would appear that since counsel appearing for the appellant was unwell, the appellant could not proceed with the cross-examination of the respondent-plaintiff and sought for short adjournment and agreed to pay costs. Instead, the court directed the appellant to engage another lawyer for cross-examination of the plaintiff. Since he did not do so, the court ordered for forfeiture of cross-examination and proceeded with the matter.

Calling in question the procedure adopted and the order passed by the trial court the appellant went in revision. The High Court by order dated 8.9.94 in CR No. 118/94 dismissed the revision. Thus this appeal by special leave.

Order 17, Rule 1(1) provides that

"The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit".

Sub-Rule (2) is relevant which reads :

"Costs of adjournment - In every such case the court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that :

- (a) xxxxxxxxxxxxxxxxxxxx
- (b) xxxxxxxxxxxxxxxxxxxx
- (c) xxxxxxxxxxxxxxxxxxxx

(d) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another court, is put forward as a ground for adjournment, the court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time,"

The Rule thus indicates that protraction of trial of the suit should not be encouraged and the court shall try the suit as expeditiously as possible. If the adjournment has occasioned on any sufficient ground, then it may, in an appropriate case, adjourn to a shorter date asking the party seeking adjournment to pay costs incurred by the party who got the witnesses produced and was ready to proceed with trial. Clause (d) of the proviso specifically mentions that if the court is satisfied that illness of the counsel or inability of the counsel to proceed with the case was put forward, except when the counsel was engaged in another case as a ground

for adjournment, it shall not grant adjournment.

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 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. Take for instance, a suit was adjourned for trial for a period of one week and the counsel appears to have suddenly become indisposed which would be known to the party. Therefore, the party, in advance, has to make alternative arrangement to proceed with the trial engaging another counsel. The words 'in time' would, therefore, indicate that reasonable time would be required for making alternative arrangements.

In this case, it is seen that the counsel for the appellant had to cross-examine the respondent-plaintiff. Unless there is time for the new counsel to be engaged for application for his mind to pleadings, issues framed, the evidence already on record, it would be difficult to proceed with the cross-examination on the spur of moment. It would be seen that the matter was adjourned from 8.8.94 to 9.8.94. Obviously, during that night the counsel must have fallen ill. Therefore, the party had no time to make alternative arrangements. Engaging a new counsel to proceed with trial would be fraught with grave risk and be unrealistic. The court should have adjourned the case for the next date so as to enable the appellant to have another counsel engaged and given instructions to the new counsel to proceed with the cross-examination in the light of the pleadings and the issue framed in that behalf.

Under these circumstances, the court was not right in refusing to adjourn the matter at least for the next day and it committed grave error of law by its order to forfeit the right of the appellant to cross-examine the respondent.

The appeal is accordingly allowed. The trial court is directed to fix

a date for cross-examination of the respondent-plaintiff on which date the appellant shall proceed with the trial of the suit. If any other witnesses are examined they should be recalled and the appellant be given opportunity to cross-examine them. In case, he does not proceed with the trial, his right to cross-examination would stand forfeited and the court would be free to proceed with the trial and dispose of the suit according to law. No costs.

B.K.M.

Appeal allowed.