ISHWARLAL MALI RATHOD

v.

GOPAL AND ORS.

Special Leave Petition (Civil Nos. 14117 – 14118 of 2021)

SEPTEMBER 20, 2021

[M. R. SHAH AND A. S. BOPANNA, JJ.]

Administration of Justice – Abuse of process of law – Repeated adjournments – Respondent-plaintiff filed suit inter alia *for eviction in 2013 – Petitioner-defendant's right to cross examine the plaintiff's witness was eventually closed in 2020 – Confirmed by High Court – Held: Ten times adjournments were given between 2015 to 2019 – Twice the adjournments were granted as a last opportunity and even cost was imposed – Trial Court and even the High Court continued to grant adjournments and as such contributed the delay in disposal of the suit – Adequate liberty was given to the defendant to cross examine the plaintiff's witness who never availed of the same and went on delaying the proceedings – Main suit is disposed of now – Petition dismissed.*

Administration of Justice – Justice delivery system – Delay – Grant of adjournments – Duty of Courts – Discussed.

Shiv Cotex v. Tirgun Auto Plast (P) Ltd. **(2011) 9 SCC 678 : [2011] 10 SCR 787;** *Babu Singh v. State of U.P.* **(1978) 1 SCC 579 : [1978] 2 SCR 777;** *Noor Mohammed v. Jethanand and Anr.* **(2013) 5 SCC 202 : [2013] 3 SCR 1146 – relied on.**

Case Law Reference

[2011] 10 SCR 787	**relied on**	**Para 5.1**
[1978] 2 SCR 777	**relied on**	**Para 5.2**
[2013] 3 SCR 1146	**relied on**	**Para 5.3**

CIVIL APPELLATE JURISDICTION: Special Leave Petition Civil Nos.14117-14118 of 2021.

From the Judgment and Order dated 17.02.2021 of the High Court of Madhya Pradesh, Bench at Indore in M.P. No.107 and 108 of 2021.

A N. K. Mody, Sr. Adv., Shishir Kumar Saxena, R. N. Pareek, Prabhuddha Singh, Ms. Soumya Chaturvedi, Ms. Sharmila, Praveen Swarup, Advs. for the Appellant.

The Order of the Court was passed by

M. R. SHAH, J.

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1. Present is the classic example of misuse of the adjournments granted by the court. Present SLPs have been preferred challenging the impugned order dated 17.02.2021 passed by the High Court of Madhya Pradesh, Bench at Indore in M.P. No.107 of 2021 and M.P. No. 108 of 2021 by which the High Court has dismissed the said misc. petition C preferred by the petitioner – original defendant, confirming the order passed by the learned Trial Court dated 21.12.2020 closing the right to cross-examine the plaintiff's witness.

2. Respondents No.1 to 4 herein filed suit for eviction, arrears of rents and mesne profit against one Ramchandra (now dead) and the D present petitioner on 14.08.2013. Petitioner herein – defendant filed the written statement and issues were framed. On 12.05.2014 plaintiffs filed an affidavit under Order XVIII Rule 4 of the CPC which was objected by the petitioner and again the plaintiffs filed an affidavit on 07.03.2015. From 12.05.2015 till 02.12.2019 at least ten times the E defendants sought adjournments which were granted by the court. Lastly the adjournment was given with cost as a last opportunity. Despite the same the petitioner – defendant did not cross-examine the plaintiff's witness. On 14.10.2019 time for cross examination was given with cost of Rs.5,000/- and with the condition that in any case they fail to cross examine, their right of cross examination would be treated as closed. F Despite the same, the petitioner – defendant did not cross examine the plaintiff's witness and therefore on 05.11.2019 their right was treated as closed. The petitioner approached the High Court by filing miscellaneous petition No.6283 of 2019 by which the right of the petitioner – defendant to cross examine the plaintiff's witness was closed. Though no leniency G was required to be shown the High Court allowed the said petition by granting last opportunity to the defendants to cross examine the witness. Despite the same the petitioner – defendant did not even thereafter also cross examine the plaintiff's witness. The suit was fixed for cross examination of plaintiff's witness on 21.12.2020. On 21.12.2020 again

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the counsel appearing on behalf of the petitioner – defendant filed an application seeking adjournment. Considering the fact that earlier number of adjournments were granted and the opportunity was given to the petitioner – defendant to cross examine the plaintiff's witness and despite the same the defendant fail to cross examine the plaintiff's witness, the learned Trial Court vide order dated 21.12.2020 closed the right of the cross-examining the plaintiff's witness. The order passed by the learned Trial Court has been confirmed by the High Court by the impugned judgment and order.

3. We have heard the learned counsel appearing on behalf of the petitioner-defendant.

4. As observed hereinabove, present is a classic example of misuse of adjournments granted by the court. It is to be noted that the respondents herein – original plaintiffs filed the suit for eviction, arrears of rent and mesne profit as far as back in the year 2013. That thereafter despite the repeated adjournments sought and granted by the court and even twice the adjournments were granted as a last opportunity and even the cost was imposed, the defendant failed to cross examine the plaintiff's witness. Although the adequate liberty was given to the defendant to cross examine the plaintiff's witness, they never availed of the same and went on delaying the proceedings by repeated prayers of adjournment and unfortunately the Trial Court and even subsequently the High Court continued to grant adjournment after adjournment and as such contributed the delay in disposal of the suit which as such was for eviction.Such approach is wholly condemnable. Law and professional ethics do not permit such practice. Repeated adjournments on one or the other pretext and adopting the dilatory tactics is an insult to justice and concept of speedy disposal of cases. Petitioner – defendant acted in a manner to cause colossal insult to justice and to concept of speedy disposal of civil litigation.

5. Grant of repeated adjournments in routine manner and how it affects ultimately the justice delivery system as such came to be considered by this court in catena of decisions and asking/grant of repeated adjournments have been repeatedly condemned by this court.

5.1 In the case of Shiv Cotex v. Tirgun Auto Plast (P) Ltd. (2011) 9 SCC 678, it is observed and held in paragraphs 14 to 17 as under:-

A "**14.** … Is the court obliged to give adjournment after adjournment merely because the stakes are high in the dispute? Should the court be a silent spectator and leave control of the case to a party to the case who has decided not to take the case forward? **15.** It is sad, but true, that the litigants seek—and the courts grant—
B adjournments at the drop of the 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. 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. The
C case in hand is a case of such misplaced sympathy. It is high time that courts become sensitive to delays in justice delivery system and realise that adjournments do dent the efficacy of the judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. The courts, particularly trial courts, must ensure that on every
D date of hearing, effective progress takes place in the suit.

16. No litigant has a right to abuse the procedure provided in CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system.

E **17.** … A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit—whether the plaintiff or the defendant—must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't,
F they do so at their own peril."

5.2 Commenting on the delay in the justice-delivery system, although in respect of the criminal trial, Krishna Iyer, J. in the case of Babu Singh v. State of U.P. (1978) 1 SCC 579 has observed in paragraph 4 as under:-

G "***4.*** … Our justice system, even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial', whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent
H being absolved from the inordinate ordeal of criminal proceedings."

5.3 In the case of Noor Mohammed v. Jethanand and Anr. (2013) 5 SCC 202, using very harsh words and condemning the repeated adjournments sought by the lawyers and granted by the courts, this court has observed in paragraph 1, 12, 13, 27 and 28 as under:-

> "**1.** In a democratic body polity which is governed by a written Constitution and where the Rule of Law is paramount, the judiciary is regarded as sentinel on the qui vive not only to protect the fundamental rights of the citizens but also to see that the democratic values as enshrined in the Constitution are respected and the faith and hope of the people in the constitutional system are not atrophied. Sacrosanctity of the Rule of Law neither recognises a master and a slave nor does it conceive of a ruler and a subject but, in quintessentiality, encapsules and sings in glory of the values of liberty, equality and justice in accordance with law requiring the present generation to have the responsibility to sustain them with all fairness for the posterity ostracising all affectations. To maintain the sacredness of democracy, sacrifice in continuum by every member of the collective is a categorical imperative. The fundamental conception of democracy can only be preserved as a colossal and priceless treasure where virtue and values of justice rule supreme and intellectual anaemia is kept at bay by constant patience, consistent perseverance, and argus-eyed vigilance. The foundation of justice, apart from other things, rests on the speedy delineation of the lis pending in courts. It would not be an exaggeration to state that it is the primary morality of justice and ethical fulcrum of the judiciary. Its profundity lies in not allowing anything to cripple the same or to do any act which would freeze it or make it suffer from impotency. Delayed delineation of a controversy in a court of law creates a dent in the normative dispensation of justice and in the ultimate eventuate, the Bench and the Bar gradually lose their reverence, for the sense of divinity and nobility really flows from the institutional serviceability. Therefore, historically, emphasis has been laid on individual institutionalism and collective institutionalism of an adjudicator while administering justice. It can be stated without any fear of contradiction that the collective collegiality can never be regarded as an alien concept to speedy dispensation of justice. That is the hallmark of duty, and that is the real measure.

A **12.** The proceedings in the second appeal before the High Court, if we allow ourselves to say so, epitomises the corrosive effect that adjournments can have on a litigation and how a lis can get entangled in the tentacles of an octopus. The philosophy of justice, the role of a lawyer and the court, the obligation of a litigant and all legislative commands, the nobility of the Bench and the Bar, the ability and efficiency of all concerned and ultimately the divinity of law are likely to make way for apathy and indifference when delay of the present nature takes place, for procrastination on the part of anyone destroys the values of life and creates a catastrophic turbulence in the sanctity of law. The virtues of adjudication cannot be allowed to be paralysed by adjournments and non-demonstration of due diligence to deal with the matter. One cannot be oblivious to the feeling necessities of the time. No one can afford to sit in an ivory tower. Neither a Judge nor a lawyer can ignore "the total push and pressure of the cosmos". It is devastating to expect infinite patience. Change of attitude is the warrant and command of the day. We may recall with profit what Justice Cardozo had said: "It is true, I think, today in every department of the law that the social value of a rule has become a test of growing power and importance." [Benjamin N. Cardozo, *The Nature of Judicial Process* (Cosimo Inc., 2009) 73]

13. It has to be kept in mind that the time of leisure has to be given a decent burial. The sooner it takes place, the better it is. It is the obligation of the present generation to march with the time and remind oneself every moment that the rule of law is the centripodal concern and delay in delineation and disposal of cases injects an artificial virus and becomes a vitiating element. The unfortunate characteristics of endemic delays have to be avoided at any cost. One has to bear in mind that this is the day, this is the hour and this is the moment, when all soldiers of law fight from the path. One has to remind oneself of the great saying,

"Awake, Arise, 'O' Partha".

27. The anguish expressed in the past and the role ascribed to the Judges, the lawyers and the litigants is a matter of perpetual concern and the same has to be reflected upon every moment. An attitude of indifference can neither be appreciated nor tolerated. Therefore, the serviceability of the institution gains significance.

That is the command of the Majesty of Law and none should make any maladroit effort to create a concavity in the same. Procrastination, whether at the individual or institutional level, is a systemic disorder. Its corrosive effect and impact is like a disorderly state of the physical frame of a man suffering from an incurable and fast progressive malignancy. Delay either by the functionaries of the court or the members of the Bar significantly exhibits indolence and one can aphoristically say, borrowing a line from Southwell "creeping snails have the weakest force" [Robert Southwell, "Loss in Delay", in William B. Turnbull (Ed.), *The Poetical Works of the Rev. Robert Southwell* (John Russell Smith, London 1856), p. 60.]. Slightly more than five decades back, talking about the responsibility of the lawyers, Nizer Louis had put thus:

> "I consider it a lawyer's task to bring calm and confidence to the distressed client. Almost everyone who comes to a law office is emotionally affected by a problem. It is only a matter of degree and of the client's inner resources to withstand the pressure." [Nizer Louis, *My Life in Court* (Doubleday & Co. Inc., New York 1961), p. 213]

A few lines from the illustrious Justice Frankfurter is fruitful to recapitulate:

"I think a person who throughout his life is nothing but a practising lawyer fulfils a very great and essential function in the life of society. Think of the responsibilities on the one hand, and the satisfaction on the other, to be a lawyer in the true sense." [Felix Frankfurter, "Proceedings in Honor of Mr. Justice Frankfurter and Distinguished Allumni, Occasional Pamphlet No. 3" (Harvard Law School, Cambridge, 1960), pp. 4-5]

28. In a democratic set-up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry 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-potentiality to bring in a state of cataclysm where justice may become a casualty. A litigant expects a reasoned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the

A altar of reasons. Timely delivery of justice keeps the faith ingrained and establishes the sustained 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 because 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-dispensation system cannot be allowed to remotely conceive of a casual approach."

C 5.4 In the aforesaid decision, this court also considered the role of advocate in the justice delivery system and considered the earlier decisions in paragraphs 17 to 22 which read as under:-

"**17.** In Ramon Services (P) Ltd. v. Subhash Kapoor [(2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152 : AIR 2001 SC 207], after referring to a passage from Mahabir Prasad Singh v. Jacks Aviation (P) Ltd. [(1999) 1 SCC 37 : AIR 1999 SC 287], the Court cautioned thus : (Ramon Services case [(2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152 : AIR 2001 SC 207], SCC p. 126, para 15)

E "15. … Nonetheless we put the profession to notice that in future the advocate would also be answerable for the consequence suffered by the party if the non-appearance was solely on the ground of a strike call. It is unjust and inequitable to cause the party alone to suffer for the self-imposed dereliction of his advocate. We may further add that the litigant who suffers entirely on account of his advocate's non- appearance in court, has also the remedy to sue the advocate for damages but that remedy would remain unaffected by the course adopted in this case. Even so, in situations like this, when the court mulcts the party with costs for the failure of his advocate to appear, we make it clear that the same court has power to permit the party to realise the costs from the advocate concerned. However, such direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause the court can certainly absolve him from such a liability."

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Be it noted, though the said passage was stated in the context of strike by the lawyers, yet it has its accent on non-appearance by a counsel in the court.

18. In this context, we may refer to the pronouncement in *Pandurang Dattatraya Khandekar* v. *Bar Council of Maharashtra* [(1984) 2 SCC 556 : 1984 SCC (Cri) 335] , wherein the Court observed that : (SCC p. 563, para 9)

> "*9.* … An advocate stands in a loco parentis towards the litigants and it therefore follows that the client is entitled to receive disinterested, sincere and honest treatment especially where the client approaches the advocate for succour in times of need."

19. In Lt. Col. S.J. Chaudhary v. State (Delhi Admn.) [(1984) 1 SCC 722 : 1984 SCC (Cri) 163 : AIR 1984 SC 618] , a three-Judge Bench, while dealing with the role of an advocate in a criminal trial, has observed as follows : (SCC pp. 723-24, para 3)

> "3. We are unable to appreciate the difficulty said to be experienced by the petitioner. It is stated that his advocate is finding it difficult to attend the court from day to day. It is the duty of every advocate, who accepts the brief in a criminal case to attend the trial from day to day. We cannot over-stress the duty of the advocate to attend to the trial from day to day. Having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend."

20. In *Mahabir Prasad Singh* [(1999) 1 SCC 37 : AIR 1999 SC 287], the Bench, laying emphasis on the obligation of a lawyer in his duty towards the Court and the duty of the Court to the Bar, has ruled as under: (SCC p. 44, paras 17-18)

> "*17.* … 'A lawyer is under obligation to do nothing that shall detract from the dignity of the court of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the Judge, and scrupulously observe the decorum of the courtroom.' [*Warevelle's Legal Ethics*, p. 182]
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> *18.* Of course, it is not a unilateral affair. There is a reciprocal duty for the court also to be courteous to the members of the Bar and to make every endeavour for maintaining and protecting the respect which members of the Bar are entitled to have

A from their clients as well as from the litigant public. Both the Bench and the Bar are the two inextricable wings of the judicial forum and therefore the aforesaid mutual respect is sine qua non for the efficient functioning of the solemn work carried on in courts of law. But that does not mean that any advocate or a group of them can boycott the courts or any particular court and ask the court to desist from discharging judicial functions. At any rate, no advocate can ask the court to avoid a case on the ground that he does not want to appear in that court."

21. While recapitulating the duties of a lawyer towards the court and society, being a member of the legal profession, this Court in *O.P. Sharma* v. *High Court of P&H* [(2011) 6 SCC 86 : (2011) 3 SCC (Civ) 218 : (2011) 2 SCC (Cri) 821 : (2011) 2 SCC (L&S) 11] has observed that : (SCC p. 92, para 17)

"*17.* The role and status of lawyers at the beginning of sovereign and democratic India is accounted as extremely vital in deciding that the nation's administration was to be governed by the rule of law."

The Bench emphasised on the role of eminent lawyers in the framing of the Constitution. The emphasis was also laid on the concept that lawyers are the officers of the court in the administration of justice.

22. In *R.K. Garg* v. *State of H.P.* [(1981) 3 SCC 166 : 1981 SCC (Cri) 663], Chandrachud, C.J., speaking for the Court pertaining to the relationship between the Bench and the Bar, opined thus : (SCC p. 170, para 9)

"*9.* … the Bar and the Bench are an integral part of the same mechanism which administers justice to the people. Many members of the Bench are drawn from the Bar and their past association is a source of inspiration and pride to them. It ought to be a matter of equal pride to the Bar. It is unquestionably true that courtesy breeds courtesy and just as charity has to begin at home, courtesy must begin with the Judge. A discourteous Judge is like an ill- tuned instrument in the setting of a courtroom. But members of the Bar will do well to remember that such flagrant violations of professional ethics

and cultured conduct will only result in the ultimate destruction of a system without which no democracy can survive."

5.5 Today the judiciary and the justice delivery system is facing acute problem of delay which ultimately affects the right of the litigant to access to justice and the speedy trial. Arrears are mounting because of such delay and dilatory tactics and asking repeated adjournments by the advocates and mechanically and in routine manner granted by the courts. It cannot be disputed that due to delay in access to justice and not getting the timely justice it may shaken the trust and confidence of the litigants in the justice delivery system. Many a times, the task of adjournments is used to kill Justice. Repeated adjournments break the back of the litigants. The courts are enjoying upon to perform their duties with the object of strengthening the confidence of common man in the institution entrusted with the administration of the justice. Any effort which weakens the system and shake the faith of the common man in the justice dispensation has to be discouraged. Therefore the courts shall not grant the adjournments in routine manner and mechanically and shall not be a party to cause for delay in dispensing the justice. The courts have to be diligence and take timely action in order to usher in efficient justice dispensation system and maintain faith in rule of law. We are also aware that whenever the trial courts refused to grant unnecessary adjournments many a times they are accused of being strict and they may face displeasure of the Bar. However, the judicial officers shall not worry about that if his conscience is clear and the judicial officer has to bear in mind his duties to the litigants who are before the courts and who have come for justice and for whom Courts are meant and all efforts shall be made by the courts to provide timely justice to the litigants. Take an example of the present case. Suit was for eviction. Many a times the suits are filed for eviction on the ground of bonafide requirements of the landlord. If plaintiff who seeks eviction decree on the ground of personal bonafide requirement is not getting the timely justice and he ultimately gets the decree after 10 to 15 years, at times cause for getting the eviction decree on the ground of personal bonafide requirement may be defeated. The resultant effect would be that such a litigant would lose confidence in the justice delivery system and instead of filing civil suit and following the law he may adopt the other mode which has no backing of law and ultimately it affects the rule of law. Therefore, the court shall be very slow in granting adjournments and as observed hereinabove they shall not grant repeated adjournments in routine manner. Time has now come

A to change the work culture and get out of the adjournment culture so that confidence and trust put by the litigants in the Justice delivery system is not shaken and Rule of Law is maintained.

5.6 In view of the above and for the reasons stated above and considering the fact that in the present case ten times adjournments
B were given between 2015 to 2019 and twice the orders were passed granting time for cross examination as a last chance and that too at one point of time even a cost was also imposed and even thereafter also when lastly the High Court passed an order with extending the time it was specifically mentioned that no further time shall be extended and/or granted still the petitioner – defendant never availed of the liberty and
C the grace shown. In fact it can be said that the petitioner – defendant misused the liberty and the grace shown by the court. It is reported that as such now even the main suit has been disposed of. In view of the circumstances, the present SLPs deserve to be dismissed and are accordingly dismissed.

Divya Pandey SLPs dismissed.