



2024:CGHC:29785

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 675 of 2024

Gofelal Banjare S/o Shri Bhagelal Banjare Aged About 65 Years R/o Village Chandanu, P. H. No. 20, Tahsil Bemetara, Police Outpost Chandanu, P. S. Nandghat, District- Bemetara Chhattisgarh.**Petitioner**

versus

1. Bhagelal (Died)

1.1 - (A). Baijnath S/o Late Bhagelal Banjare Aged About 61 Years R/o Village And Post Chandanu, Tahsil And District- Bemetara Chhattisgarh.Defendants.

1.2 - (B). Sushil S/o Late Bhagelal Banjare Aged About 48 Years R/o Village And Post Chandanu, Tahsil And District- Bemetara Chhattisgarh.

1.3 - (C). Basan Bai W/o Chaindas Aged About 75 Years R/o Village Dhabadih, Post Risda, Tahsil And District- Baloda- Bazar Chhattisgarh. Now District-Baloda Bazar- Bhatapara Chhattisgarh.

1.4 - (D). Prem Bai W/o Mehatru Aged About 68 Years R/o Village Mungwai, Post Karai, Tahsil Nawagarh, District- Bemetara Chhattisgarh.

1.5 - (E). Durpat Bai W/o Chandu Aged About 50 Years R/o Village Paraswani, Post Bijradih, Tahsil Bhatapara, District- Baloda- Bazar, Chhattisgarh. Now Baloda Bazar- Bhatapara Chhattisgarh.

2. State Of Chhattisgarh Through The Collector, District Bemetara Chhattisgarh.Defendants.

... Respondents

For Petitioner	:	Mr. Ritesh Verma, Advocate.
For Res No.1(A) to (E)/ defendants	:	Mr. H. S. Patel, Advocate.
For State	:	Ms. Vaishali Mahilong, PL.

SB : Hon'ble Shri Justice Deepak Kumar Tiwari, J.
Order On Board

08.08.2024

1. This petition has been filed under Article 227 of the Constitution of India challenging the legality and validity of the order dated 27.07.2024 passed by the Third Civil Judge, Senior Division, Bemetara (CG) in Civil Suit No.46-A/2017, whereby, opportunity of the plaintiff/petitioner to adduce the evidence was closed.
2. The plaintiff has filed a civil suit for declaration of title, permanent injunction and possession in respect of the suit land. In the said suit, earlier he has filed an affidavit in the form of Order 18 Rule 4 of the CPC for examination of the chief witness and one of the witnesses was examined on 24.07.2024 in presence of one of lawyers namely Shri Anand Sahu. On 27.07.2024, when the case was fixed for further evidence, though some witnesses of the plaintiff were reached to the concerned Court, however, the plaintiff has neither produced the said witnesses before the trial Court and informed the Court that original counsel is coming from outside and only in the presence of said counsel, examination of the witnesses has to be done. When the matter was taken up in the second round, on the same day, though the trial Court has made a direction that cross-examination of the witnesses can be done in presence of local lawyer Shri Anand Sahu, however, plaintiff again prayed for sometime. Thereafter, the trial Court has taken up the matter several times on the same day and when the case was taken up in the sixth round, local counsel Shri Anand Sahu informed to the Court that he has tried to contact the plaintiff as well as the original counsel but their

mobiles are switched off. In such compelling circumstances, the trial Court observed that though several opportunities have already been given by imposing a cost, however, the plaintiff witnesses have not turned up for cross-examination, as a result of which, opportunity to adduce the evidence of the plaintiff was closed. Hence, this petition.

3. Before commencing the arguments, learned counsel for the petitioner/plaintiff informed that earlier the plaintiff had filed WP (227) No.316/2024 before this Court challenging the order dated 1.4.2024 passed by the 3rd Civil Judge, Class-I, Bemetara in Civil suit No.46-A/2017 whereby application preferred by the petitioner/plaintiff under Order 6 Rule 17 of the CPC was dismissed. He submits that the said petition was allowed by this Court.
4. Learned counsel for the petitioner submits that earlier also prayer for adjournments was allowed by the trial Court on reasonable grounds, therefore, the trial Court should not have refused the prayer for adjournment. He also submits that on the date of passing of impugned order i.e. 27.07.2024, the petitioner has engaged outside lawyer but he could not reach the trial Court within time. In such circumstances, when the client was willing to engage outside lawyer and local lawyer could not represent the case, the party should not be penalized, particularly, for the fault of the lawyer. He also submits that the parties are villagers and they depend upon their lawyer for the court proceedings. Therefore, as a last indulgence, an opportunity may be granted to the plaintiff to adduce evidence by imposing suitable cost in order to advance the cause of justice.

5. On the contrary, learned counsel for the defendants supports the impugned order.
6. Heard learned counsel for the parties and perused the orders of the trial Court along with documents annexed with the petition.
7. It is well established that counsel appearing for a litigant has to have institutional responsibility. From perusal of the orders of the trial Court, it is apparent that on 24.07.2024, Shri Anand Sahu, Advocate himself conducted examination of main witness Gofelal Banjare, however, on the next date of hearing on 27.07.2024, he informed the trial Court that though witnesses have reached the Court, however, they are waiting for outside lawyer. Thereafter, the trial Court has taken up the matter several times and granted several opportunities on the same day. However, when the matter was taken sixth time, Shri Anand Sahu, Adv., submitted before the Court that he has tried to contact the plaintiff and the original counsel, but their mobile phones are switched off. Thereafter the trial Court passed the impugned order. Though certain affidavits have been executed by the witnesses on 30.07.2024 stating willingness to adduce their evidence, however, at this stage, learned counsel for the petitioner does not wish to press upon those affidavits.
8. When a party has engaged a lawyer and relied upon him, it is duty of the lawyer to remain present before the Court as and when required. When pleader is not able to represent the case in the Court for personal reasons, it should be the courtesy of the lawyer to inform the Court in proper manner by filing suitable application seeking adjournment on personal grounds. It is professional duty of the lawyer which requires him to attend the Court punctually. When a lawyer fails to perform his

professional duty for one reason or the other, he has institutional responsibilities not only towards litigant but also for the Court and other party.

9. In the matter of **Noor Mohammed Vs. Jethanand and anr [(2013) 5 SCC 202]**, commenting on the delay caused on account of dilatory tactics adopted by the parties, the Hon'ble Supreme Court compelled to say as under:-

“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 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.

29. In this context, it is apt to refer to a passage from *Ramdeo Chauhan Alias Raj Nath v. State of Assam*[(2001) 5 SCC 714]: -

“22. ... The judicial system cannot be allowed to be taken to ransom by having resort to imaginative and concocted grounds by taking advantage of loose sentences appearing in the evidence of some of the witnesses, particularly at the stage of special leave petition. The law insists on finality of judgments and is more concerned with the strengthening of the judicial system. The courts are enjoined upon to perform their duties with the object of strengthening the confidence of the common man in the institution entrusted with the administration of justice. Any effort which weakens the system and shakens the faith of the common man in the justice dispensation system has to be discouraged.”

30. In *Zahira Habibulla H. Sheikh and another v. State of Gujarat and others*[(2004) 4 SCC 158], emphasizing on the duty of Court to maintain public confidence in the administration of justice, this Court has poignantly held as follows: -

“35. ...Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice – often referred to as the duty to vindicate and uphold the “majesty of the law”. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it.”

31. Thus, from the aforesaid, it is clear as day that everyone involved in the system of dispensation of justice has to inspire the confidence of the common man in the effectiveness of the judicial system. Sustenance 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.”

10. Reverting back to the present case, the said original lawyer engaged by the parties could not reach the Court within time and Shri Anand Sahu, Adv who was present before the Court did not convince his clients for recording of deposition. Every lawyer is expected to keep in mind the fact that he is also an officer of the Court and judicial system is based upon cooperation of the lawyers. The parties are completely depend upon their lawyer to represent their case.
11. Moreover, since on the earlier date of hearing, Shri Anand Sahu, Adv. himself conducted examination of the main witness, then it was expected from him to continue with the evidence on the next date also in absence of other lawyer, particularly, when only cross-examination was to be conducted. It was also expected from outside/engaged lawyer to instruct local lawyer to participate in the court proceedings in such circumstances, however, he has neither extended such courtesy before the Court, nor taken into confidence such facts to local lawyer nor the party.
12. It is also well established that the Code of Civil Procedure is designed to facilitate justice and not a penal enactment for punishment and penalties. Apart from that, a prayer of further adjournment on the ground that past adjournments have also been granted after considering the sufficient cause, is no ground to deny further adjournment. However, the law is well established that a party cannot be penalized for the fault of the counsel.
13. In view of the aforesaid backdrop and considering the entire fact situation of the case and also keeping in mind the fact that parties are rural villagers, this Court deems it appropriate to grant one more opportunity to

the plaintiff to adduce the evidence subject to payment of cost of Rs.5,000/- within a period of 10 days from the date of receipt of copy of this order. Ordered accordingly.

14. It is also directed that out of the aforesaid cost, Rs.2500/- shall be deposited before the District Legal Services Authority, Bemetara and remaining amount of Rs.2500/- shall be paid to defendants through their lawyer in proportionate manner.
15. After payment of cost, the trial Court shall permit the plaintiff to adduce the evidence in accordance with law and recording of plaintiff evidence shall be completed expeditiously preferably prior to 09.09.2024.
16. It is also expected from the concerned lawyers of the parties to positively remain present before the Court on the date given by the trial Court. However, if the lawyer is not in a position to remain present, he shall make alternative arrangement for proceedings of the case in order to avoid inordinate delay.
17. With the aforesaid observation and direction, the petition stands allowed to the extent indicated above.

Sd/-

(Deepak Kumar Tiwari)
Judge

WP227 No. 675 of 2024

GOFELAL BANJARE versus BHAGELAL (DIED) THROUGH LRS

HEADNOTE

The Counsel has institutional responsibilities not only towards litigant but also towards the Court and other party. When the lawyer is not in a position to remain present in time before the Court, he shall make alternative arrangement for proceedings of the case in order to avoid delay.