



SPECIAL CIVIL SUIT NO.20/2018

ORDER BELOW EXHIBIT-1

1. Before I pass any order, it would be apt to mention about proceedings of the suit which took place so far. Suit came to be filed on 01.06.2016 along-with injunction application at exhibit-05. Injunction application came to be rejected vide order dt.17.06.2021. Issues came to be framed vide exhibit-45 on 28.12.2021. Since then suit is listed for evidence of the plaintiff.
2. After that After framing of issues notice came to be issued on plaintiff. Notice was served to the plaintiff on 30.07.2022. Same is placed on record at exhibit-46/ An application came to be filed by plaintiff side at exhibit-47, on 30.07.2022. Same was granted with cost of Rs.2000/-. Again adjournment application came to be tendered by plaintiff was granted as last chance on 25.08.2022. This adjournment application of the plaintiff came to be granted as last chance with specific condition to produce evidence. On 13.07.2022.
3. Advocate for the plaintiff Mr.V.J.Patel filed pursis today at exhibit-49 retiring from the suit. He also produce screenshot of whatsapp chat. This whatsapp chat is today's date. Be it noted that in whatsapp chat vide mark-49/1, there is specific

mentioning about today's date.

4. Be it stated that, in this suit, this court believes that again and again notices does not require to be issued on the plaintiff. When this Court issued notice and when even after imposing cost, plaintiff did not turn up for leading his evidence it can be believed that plaintiff is no more interested in the suit proceedings. Be it stated that, reluctant approach of the plaintiff suggests that, he is no more interested in the proceedings of the suit.
5. In this suit this Court of the opinion that plaintiff's suit requires to be dismiss for want of prosecution. Because, despite of ample opportunities made available to the plaintiff he has failed to produced evidence. Even proceedings of the suit demonstrates that plaintiff failed to proceed with the suit as ordered by this Court. This very reluctant approach of the plaintiff suggests that, plaintiff is no more interested in the suit proceedings.
6. **This Court may only observe that Law Courts never tolerate an indolent litigant since delay defeats equity - the Latin maxim *vigilantibus et non dormientibus jura subveniunt* (the law assists those who are vigilant and not those who are indolent). As a matter of fact, lapse of time is a species for forfeiture of right.**
7. Hon'ble Supreme Court in case of *State Bank of India Vs. Atindra Nath Bhattacharya* reported as AIR 2019 SC 4777, observed as under with regard to adjourning matter for sake of justice.

*“10. The learned Single Bench has set aside the order of punishment as well as the penalty order directing the employer to serve a notice before imposing penalty. The respondent avoided availing the said opportunity when offered on March 24, 2016, April 7, 2016 and April 22, 2016. Once opportunity has been granted to the respondent, he is not entitled to another opportunity on the ground of compassion. The only reasoning given by the Division Bench is 'justice demands' that the respondent be given one last opportunity to place his version. The respondent has lost his chance to put his version before the Competent Authority when called upon by the Authority to do so. **Time and again opportunity of hearing cannot be granted on the pretext of justice. The delaying tactics cannot be rewarded in such a manner. Once the respondent has failed to avail of opportunity of hearing granted, the Bank cannot be directed to give another opportunity for the sake of justice. Therefore, we find that the directions contained in Para 18 of the judgment passed by the Division Bench are not sustainable and the same are set aside.**”* It is also required to be noted that, this judgement was delivered in service matter. But, what was observed by Hon'ble Apex Court with regard to adjourning matter for sake of justice can surely be put in to motion in present suit as in this suit also plaintiff is given more than enough opportunities to lead his evidence.

8. This Court can also recall herein judgement of Hon'ble

Supreme Court delivered in case of **Ishwarlal Mali Rathod Vs. Gopal reported as 2022 (1) CivCC 176** observed as under as to adjourning matter unnecessarily.

“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.

5.5 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 here inabove they shall not grant repeated adjournments in routine manner. Time has***

now come 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.”

9. Further in case of Mukeshkumar Rajendrabhai Shah v/s. Additional Development Commissioner reported in 1999 (2) GLH 969, Hon'ble Gujarat High Court has held that “The authority or forum is not bound to wait till the party or his advocate is as per his convenience, pleasure & leisure ready to proceed with the matter”. Thus, such infructuous litigation is required to be weed out.

10. Consequently, I pass following order.

-: O R D E R :-

1. Present suit is hereby ordered to be dismiss in view of Order-XVII, Rule-3 & 2 read with O.IX, Rule-III of Civil Procedure Code.
2. No order as to cost.
3. Interlocutory application pending if any, same to be considered as disposed off in view of above dismissal order.

Pronounced & signed in the Open Court today.

Date : 05.09.2022

Morbi.

Vikram Karsanbhai Solanki

2nd Additional Senior Civil Judge,

Morbi.

Judge Code:- GJ-01099