

(1988) 10 AHC CK 0026

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 9631 of 1988

Suryabali and Others

APPELLANT

Vs

The VI Additional Dist. Judge,
Deoria and Others

RESPONDENT

Date of Decision: Oct. 31, 1988

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 17 Rule 1, Order 17 Rule 2, Order 17 Rule 3

Citation: AIR 1989 All 179 : (1989) AWC 432

Hon'ble Judges: B.L. Yadav, J

Bench: Single Bench

Advocate: S.N. Tripathi, for the Appellant; T.P. Singh, for the Respondent

Final Decision: Allowed

Judgement

B.L. Yadav, J.

By the present petition under Article 226 of the Constitution of India the impugned order dated 21-4-88 passed by the Additional District Judge, rejecting the Civil Revision of the petitioner, and the orders dated 24-2-87 and 9-3-87 are sought to be quashed.

2. It appears that an application was filed on 17-9-81 (Annexure 1 to the petition) that the defendant may be given time to file objection on the report of the Commissioner. That application was dismissed by order dated 24-2-87 (Annexure 3) and the parties were directed to produce evidence forthwith. The petitioner filed an application to recall the order dated 24-2-87 and that application was rejected by order dated 9-3-87. Against these orders the present petition has been filed.

3. Heard the learned counsel for the parties. The operative portion of the order" dated 24-2-87 is set out below :

"The application 183D is rejected for the above reason. The parties to produce evidence forthwith. The defendants are not adducing any evidence. Put up at 1.15 p.m. for further orders."

When the case was again called out at 1.15 p.m. the following order was passed :

"Case called out. Counsel for the plaintiff present. None is present for the defendant despite of earlier calls. The evidence of the defendant is closed. Fix 9-3-87 for the arguments of the parties, if any."

4. The learned Munsif passed the order directing the parties to produce evidence on the same date (24-2-87) and on the same date the case was again called out. As the defendant was not present, the evidence was closed. No opportunity to the defendant was given by fixing some other date to produce evidence. Under Order 17, Rule 3 of the C.P.C. (for short the Code) the provision is that where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed the Court may, notwithstanding such default,-- (a) if the parties are present, proceed to decide the suit forthwith; or (b) if the parties are, or any of them is, absent, proceed under Rule 2.

5. A bare reading of the aforesaid provision would indicate that the time must be granted on a particular date and at subsequent date, may be a short date, according to the requirement of the case, or in other cases it may be a long date. If a particular party has failed to produce his evidence or to perform any other act, the Court may pass an order appropriate to the requirement in the case, but in the present case it appears that the provisions of Rule 3 were not noticed and on the same date it was directed that the defendant shall produce evidence and when the case was called out at 1.15 p. m., it was directed that as the defendant was not present, hence the evidence was closed. The procedure for closing evidence of the defendant on the same date without granting time does not appear to be justified.

6. It is the elementary rule of interpretation that the procedural law has to be interpreted with a view to advance substantial justice. Order 17 of the Code commences with the heading "Adjournment". Rules 1, 2 and 3 have to be interpreted keeping in view that the Parliament has confined Order 17 particularly to granting adjournments, refusing the same and the consequences emanating therefrom. Sub-rule (1) of Rule 1 of Order 17 is to the effect that if sufficient case is shown at any stage of the suit, the Court shall have the power to grant time to the parties and from time to time the Court may adjourn the hearing of the suit. This Sub-rule gives unfettered discretion to the Court to grant appropriate adjournments at any stage. Sub-rule (2) is about the cost of adjournment. Rule 2 applies to the cases of default in appearance of the parties on the date to which hearing of the suit is adjourned. In case the party failed to appear the Court may dispose of the suit in

one of the modes directed under Order 9. The only distinction is that Order 9 deals with the appearance of parties at the first hearing of the suit, whereas Rule 2 deals with the failure of a party to appear on the adjourned hearing. There is an explanation added to Rule 2 that in case a substantial portion of evidence of any party has already been recorded but the party failed to appear on any day to which the hearing was adjourned, the Court may, in its discretion, proceed with the case as if the said party was present. Rule 3 is about failure of the party to whom time has been granted to produce evidence or to cause attendance of his witnesses, in that event the Court may, in spite of such default, if parties are present, decide the suit forthwith. In case the parties are absent the Court may proceed under Rule 2, meaning thereby that the Court may proceed to dispose of the suit under Order 9, or in case substantial evidence has been led, in spite of absence, the Court may proceed with the case.

7. In the present case no time was granted to the defendants to produce evidence. Only the petitioner wanted some time to file objection to the report of Commissioner, But that application was rejected. The procedural fairness of the principles of natural justice has been embodied in the provisions of Rules 1, 2 and 3 of Order 17 with a view that justice is done, as any order passed by the Court would affect rights of the parties. These rules have not to be interpreted so that they may exclude principles of natural justice which are so common. The broad principles of natural justice are contained in the lathi maxim AUDI ALTERAM PARTEM. i.e., the right of a party must not be affected without affording him opportunity of hearing. The other inescapable conclusion is that he must be given reasonable opportunity of hearing. The next maxim correlated with the first one is "QUI ALIQUID STATUERIT PARTE INAUDITA ALTERA, ACQUUM LICET DIXERIT HAUD ACQUUM FACERIT, which means that he, who shall decide anything without the other side having been heard, although he may have said what is right, will not have done what is right, or in other words, as it is now expressed these days justice should not only be done but must manifestly appear to have been done. See John v. Rees 1970 ChD 345 . [Union of India and Another Vs. Tulsiram Patel and Others,](#)

8. In the present case as the interpretation has been placed by the Munsif and if the same is held to be justified, that would render the provisions of Order 17 unworkable. That interpretation has always to be avoided which would bring about the result of rendering the system. unworkable in practice. The inescapable corollary is that the construction which leads to absurdity must be avoided. See [Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others,](#) ; [Liberty Oil Mills and Others Vs. Union of India \(UOI\) and Others,](#) .

9. Under the circumstances, a short adjournment should have been granted to enable the defendant to produce his evidence. As the defendant was not granted time to produce evidence, hence in all fairness the adjournment ought to have been

allowed. Under the circumstances, I am of the view that refusal to grant adjournment to the defendant was obviously unjust and unfair. See [Nirankar Nath Wahi and Others Vs. Fifth Additional District Judge, Moradabad and Others, .](#)

10. The matter can be viewed from another angle. As no time was granted when the evidence of the defendant was closed, the Munsif for that purpose did not follow any specific provision nor he indicated as to under which rule of Order 17 he was passing the order. The Courts of law are to follow the procedure, but they cannot assume the procedure or lay down the procedure and then to follow it. In other words, the Courts can just interpret the provision if there is any, but cannot assume it in its absence. The matter can be stated otherwise, that even for "casus omissus", the Court has no power to legislate or to fill up the gap. In certain appropriate cases, however, just the creases can be ironed out. But that it not the case here. The Court has to allow the intention of statute to override the defect of wordings, if any.

11. In view of the discussions made above, the order of Munsif not allowing the adjournment to the defendant to produce his evidence and dismissing the application for restoration, are manifestly erroneous and deserve to be quashed.

12. In the premises aforesaid, the petition succeeds and is allowed. The impugned orders dated 24-2-87 and 9-3-87 are hereby quashed. The parties are directed to appear before the Munsif on 21st December, 1988. The Munsif would grant short adjournment to consider the objection of defendant on the report of the Commisstioner.

13. Thereafter he would grant another short adjournment to the parties to produce their evidence. The Munsif would dispose of the suit in any case by 31-3-1989. There shall, however, be no order as to costs.