

(1985) 01 DEL CK 0063

Delhi High Court

Case No: Civil Revision Appeal No. 1069 of 1981

Onkar Travels

APPELLANT

Vs

New Delhi Municipal Committee

RESPONDENT

Date of Decision: Jan. 23, 1985

Citation: (1985) 8 DRJ 314

Hon'ble Judges: M. Sharief-ud-din, J

Bench: Single Bench

Judgement

Malik Sharief-Ud-Din, J.

(1) The respondent has not put in appearance despite service being complete. Under the circumstances, I have heard Mr. Ahuja, counsel for the petitioner.

(2) This revision petition is connection with Civil Revision No. 1088 of 1981 as both the petitioners arise out of two orders passed by Shri P.D. Jarwal, Sub Judge 1st Class, Delhi one on 18th March 1981 and the other one on 23rd March 1981. A suit of the petitioner was being tried by the learned sub judge wherein by his impugned order dated 18th March 1981 the plaintiff-petitioner's evidence was closed. An application u/s 151 Cpc was moved before the learned trial sub judge for reviewing this order which also was declined by his order dated 23rd November, 1981. In this way both the petitions are connected and are to be disposed of together.

(3) Mr. Ahuja has taken me through the order-sheet on the file of the court below. It would appear that the first witness of the plaintiff-petitioner came to be examined on 22nd May 1979. The plaintiff was supposed to be ill on that day. Admittedly, the petitioner had sought assistance of the court in summoning some witnesses by on 16th August 1979 no such summoned witnesses put in appearance. On 30th November 1979 when the suit was again listed turn evidence the Presiding Officer was on leave. Thereafter, the case came up for hearing on 15th February 1980. The court below noticed that no process fee has been paid but granted an adjournment and the case came to be adjourned to 21st May 1980 when again the Presiding

Officer was on leave On next date of hearing i.e. 3rd September 1980 the Presiding Officer was again on leave and the case was adjourned to 3rd December 1980 0" that date of hearing when no witness of the plaintiff was present, he was burdened with costs of Rs. 100.00 and the case was posted for evidence on 18th March 1981 when the impugned order dated 18th March 1981 was passed closing the evidence of the plaintiff petitioner

(4) I am not really able to understand as to how the court below resorted to the extremely harsh measure when it is not denied that some witnesses were summoned and it was the duty of the court of provide necessary assistance in that connection. That would be the normal way of dealing with the matter unless the court comes to the conclusion that the party was mainly responsible turn dragging on the matter. From that view of the matter alone the court below was not justified in closing the plaintiff-petitioner's to dispense justice and that cannot be done by disposing of the cases. The laudable object can only be achieved if the cases are decided in accordance with law and the procedure. From that point of view alone I am of the view that both the orders passed by the learned Sub Judge cannot be maintained.

(5) Mr. Ahuja has, however, submitted that he is prepared to examine the plaintiff and one more witness at his own responsibility if any opportunity is granted to him. Since I have made certain observations in respect of the impugned orders it is not a matter of favoring Mr. Ahuja. From my point of view he is entitled to a direction as requested as a matter of right. Both the revision petitions, Therefore, (C.R. 1069/81 and C.R. 1088/81) are accepted and the impugned orders are set aside. The stay order passed earlier shall also stand vacated.

(6) Copy of this order together with the record of the court below shall immediately be transmitted back Ld. counsel for the petitioner Mr. Ahuja states that 10th April 1985 is the next date of hearing fixed before the court below i e. before Shri R.K. Yadav Sub Judge. The learned Sub Judge is directed to record the statement of the plaintiff and one of his witness, if possible, on that day. I am deliberately using the words "if possible" because it may be that due to the absence of the defendant or his counsel the case may have to be adjourned. In that event the learned Sub Judge shall fix a date and allow the plaintiff to tender his own testimony as well as the testimony of his witness.

(7) Both the revision petitions i.e. C.R 1069 of 1981 and C.R. 1088 of 1981 stand accepted.