In the Supreme Court of Bangladesh (Appellate Division)

Civil Petition For Leave To Appeal No. 1532 of 2001

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Decided On:

The 1st November, 2001

Result:

Petition dismissed.

Parties:

Mahbubur Rahman and others vs Agrani Bank and another

Hon'ble Judge(s):

Mahmudul Amin Choudhury, C.J. Mohammad Gholam Rabbani and Mohammad Fazlul Karim, JJ

Counsels:

For the Petitioners:

Mr. Shaheed Alam, Advocate instructed by Mr. Chowdhury Md. Jahangir, Advocate-on-Record for the Petitioners.

For the Respondents:

Respondents: Not represented.

Subject Matter:

Adjournment

Adjournment of a case is essentially a matter of discretion of the Court, but it has to be exercised judicially. Adjournment cannot be allowed as a matter of course, even if both the parties ask for it. No adjournment should be granted unless "sufficient cause" is made out for it.

(Para-5)

Jurisdiction:

Civil Jurisdiction

Related Acts/Rules/Orders:

N/A

Key words:

JUDGMENT

Mohammad Fazlul Karim, J: This petition for leave to appeal is directed against the judgment and order dated 2.7.2001 passed by the High Court Division in F.M. A. No. 549 of 2001 summarily rejecting the appeal filed against the judgment and order dated 22.4.2001 of the Subordinate Judge, Artha Rin Adalat No. 1, Dhaka in Miscellaneous Case No. 2 of 1999.

2. The petitioners filed Title Suit No. 34 of 1996 for declaration that the heba-bil-Ewaz executed in favour of respondent No. 2 was cancelled by a registered instrument and thus respondent No. 2 had no right, title and pos- session in the suit land. The suit was

decreed exparte on 21.2.1998. On 14.10.1998 the officer of respondent No. 1 told respondent No. 2 that he took loan from Bank by mortgaging his land and the property would be put to auction for failure to repay the loan. The petitioner thereupon filed Miscellaneous Case No. 2 of 1999 under Order 21 Rule 58(2) read with section 151 of the Code of Civil Procedure, when the case was taken up for hearing the petitioners sought adjournment but the prayer was rejected. Ultimately as none appeared the Miscellaneous Case was dismissed. The petitioners moved the High Court Division in First Miscellaneous Appeal Tender No. 548 of 2001 and the same was taken up for hearing but was dismissed summarily by the impugned order.

3. Mr. Shaheed Alam, learned Advocate appearing for the petitioners submits that the High Court Division did not appreciate that filing lawyer of the petitioner became a penal lawyer of respondent No. 1 and was not in a position to conduct the hearing of the case on behalf of the petitioner, and that petitioner had to engage another lawyer who prayed for time for preparation of the case, but the learned Subordinate Judge most illegally dismissed the case without giving any opportunity to the appellant. Learned Advocate next submits that High Court Division wrongly dismissed the appeal summarily when petitioner stated that they filed an application under Order 21 Rule 58(2) of the Code of Civil Procedure as their property has wrongly put to auction and they made out a case for proper and fair adjudication, the Miscellaneous case should not have been dismissed without giving chance to the petitioner.

4. On perusal of the impugned order it appears that the application for adjournment filed before the Subordinate Judge did not disclose any cogent ground for adjournment and which is due to total non-application of mind in preparing the petition with ground capable of satisfying the Court about the reasons for adjournment. Moreover none was present after the application was rejected to pursue at the hearing before the Courts below. The petitioner having failed to make out any the case for adjournment with any ground which is required to be considered by the Court in exercise of judicial discretion in the matter of adjournment of the case and admittedly no case have been made out in the application for adjournment. Order 17 rule 1 CPC provides that the Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them and may from time to time adjourn the hearing of the suit.

5. Adjournment is entirely discretionary but the discretion must be exercised judicially. Adjournment cannot be allowed as a matter of course, even if both the parties ask for if or agree to it. No adjournment showed be granted unless sufficient cause for the same is made out. The words “sufficient cause” is a question of fact depending on the facts and circumstances of the case. The court considering the materials constituting sufficient cause exercises the discretion in adjourning the case and such exercise of discretion based on sound material is seldom inter-ferred by the appellate or revisional Court.

6. We do not find any cogent reasons to disagree with the finding arrived at by the High Court Division in summarily dismissing the appeal. The learned Advocate for the petitioners could point out any illegality or legal infirmity in the impugned order.

The petition is accordingly dismissed.

KAK