



Adv. Pratik Sarkar, Partner, Vidhi Legal

Tareekh par tareekh!!!

Adjournments in proceedings under IBC

A recent incident at Karkardooma Court Complex - New Delhi has not only reminded us of the famous scene from 'Damini', but also has highlighted an age-old malaise of long-drawn judicial proceedings, which has plagued our Justice Delivery Institutions. Unfortunately, from which even proceedings under Insolvency & Bankruptcy Code (which was intended to be a law providing for time-bound resolution of Companies who are unable to pay-off their debts) could not remain immune. The undersigned author by this article series highlights the settled position in law and the binding precedents, relying on which can help minimise the delays in Court proceedings.

- Part-I** : **Arguing Counsel/Senior appearing in the matter is addressing another Court**
- Part-II** : **Long-Extended hearing & Groundless filing**
- Part-III** : **Copies of pleadings not served to the other side/ not available with the Bench**
- Part-IV** : **False statements & Groundless allegations made by Litigants**

Part-I

Arguing Counsel/Senior appearing in the matter is addressing another Court

Though complex litigations require greater degree of assistance by experienced Advocates/Professionals to be rendered to the Hon'ble Bench for just decision making, the practice of seeking adjournment on such grounds have been discouraged. Hon'ble Allahabad High Court in *Pramendra Yadav V/s State of UP & Ors. - WRIT - A No. - 9067 of 2019*, in its order date 1st Dec'20,

noted as under:

It is not made clear that as to under which provision of law, name of Senior Advocate is reflected in the cause list and further, that as per the understanding of this Court, ***Senior Advocates appears on instructions of the instructing counsel, therefore, there cannot be any ground for adjournment to accommodate non-appearance of the designated Senior Counsel. ...***

Pertinent to indicate that Full Bench of Hon'ble Supreme Court in R. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid **AIR 1963 SC 1** has ruled:

Para 55: ... a litigant is not entitled to choose the personnel of the Court to hear his case, ***nor can he insist upon an adjournment of the case because the date fixed for hearing is not convenient to his counsel. Convenience of counsel must subserve the larger interest of the administration of justice. ...***

In situations where the Advocate representing a litigant while seeking adjournment does not argue/contests the case on its merits, Hon'ble High Court of Karnataka in M. Krishnappa V/s Menasamma, **2020 SCC OnLine Kar 1648** has ruled:

Para 22: The above case [G. Ratna Raj (Dead) by legal representatives v. Sri. Muthukumarasamy Permanent Fund Limited reported in **(2019) 11 SCC 301**] makes it clear that ***when the defendants enter appearance but does not contest the case, he will be treated exparte*** and the defendants can maintain a petition under Order 9 Rule 13 of CPC.

Also, Hon'ble Supreme Court in Modi Sugar Mills V/s Union of India, **AIR 1984 SCC 338**, decided the issue on its merits despite the absence of the appellant when the matter was called out for hearing. It noted –

Para 1: *When the appeal was called out for hearing nobody appeared for the appellant. We requested Mr Harbans Lal, Senior Advocate for the Union of India to take us through the relevant documents and the judgment.*

Hon'ble Supreme Court Full Bench in Ram Siromani Tripathi V/s State of U.P., **2019 SCC OnLine SC 2033** (Civil Appeal Nos. 9142-9144 of 2010 and Civil Appeal No. 6156 of 2012) ruled:

Para 1: Mr. R.K. Ojha, learned counsel appears on behalf of the counsel for the appellants and submits that the learned counsel for the appellants is not present in the Court today. ***It is stated that he is out of station. This is no ground to seek adjournment. We therefore reject the request for adjournment. We have asked the learned counsel to argue the matter. He submits that he does not know anything about the case.***

Para 2: In these circumstances, we dismiss the appeals for non-prosecution.

Para 3: We make it clear that since we have not found it to be a good ground for adjournment, ***under no circumstances, application for restoration shall be entertained.***

Similarly, Hon'ble Odisha High Court in Biranjan Panda V/s Bank of India, **AIR 2009 Ori 6** asked the

counsel who was present to press the application for adjournment, as to reasons why the arguments on merit could not be advanced (excerpts reproduced subsequently).

The question is, whether declining adjournment on grounds of non-appearance of counsel is akin to denial of 'Fair Hearing' Hon'ble Delhi High Court in this regard in Om Prakash V/s Murti Devi 2007 SCC OnLine Del 1322 has ruled:

Para 12: ... The Court is supposed to work and dispense justice *whether advocates appear for the assistance of litigants or not.* ... A litigant who can brief his advocate and get the complaint prepared can state his case in his own words before the Judge and he can get his statement recorded. The Judge is duty bound to record the statement of complainant, if the complainant is willing and ready to make his statement. In the present case, the complainant had not shown his willingness, at any point of time, to lead evidence before the trial Court, rather the complainant had only been saying that there was no evidence available or his Counsel was not available. *Fair trial and giving fair opportunity to a person to present his case only means that the person should be given hearing and should be given to call his Counsel on the date when the case is fixed. Fair trial does not mean that even when Counsel is not appearing in the Court deliberately, either due to strike or because of his business somewhere else, the Court should stop working and adjourn the cases.* Court cannot adopt a coercive measure to bring the Counsel to the Court to assist his litigant. *It is the litigant who has to bring his Counsel to the Court for assistance. Legal aid cannot be given to a litigant who is capable of engaging a Counsel and who has already engaged a Counsel but his Counsel is refusing to appear in the Court on one or the other ground.* ...

Hon'ble Supreme Court in State of U.P. V/s Shambhu Nath Singh, (2001) 4 SCC 667 has ruled:

Para 13: ... Even when witnesses are present, cases are adjourned on far less serious reasons or even on flippant grounds. *Adjournments are granted even in such situations on the mere asking for it. Quite often such adjournments are granted to suit the convenience of the advocate concerned. We make it clear that the legislature has frowned at granting adjournments on that ground. At any rate inconvenience of an advocate is not a "special reason"*

Hon'ble Supreme Court in Gurnaib Singh V/s State of Punjab, (2013) 7 SCC 108 held:

Para 35: [Ed.: Para 35 corrected vide Official Corrigendum No. F.3/Ed.B.J./42/2013 dated 1-7-2013]. We have expressed our anguish, agony and concern about the manner in which the trial has been conducted. *We hope and trust that the trial courts shall keep in mind the statutory provisions and the interpretation placed by this Court and not be guided by their own thinking or should not become mute spectators when a trial is being conducted by allowing the control to the counsel for the parties.* They have their roles to perform. They are required to monitor. They cannot abandon their responsibility. ... The administration of justice reflects its purity when the Bench and the Bar perform their duties with utmost sincerity. *An advocate cannot afford to bring any kind of disrespect to fairness of trial by taking recourse to subterfuges for procrastinating the same.*

It is not the case which is being made out here that the Hon'ble Tribunal under any circumstances whatsoever must refrain from granting adjournment. Hon'ble Supreme Court in Bashir Ahmed V/s Mehmood Hussain Shah, (1995) 3 SCC 529 held:

Para 5: The rule [Order 17, Rule 1(1) & Rule 1(2)] thus indicates that protraction of trial of the suit should not be encouraged and the court shall try the suit as expeditiously as possible. ***If the adjournment has occasioned on any sufficient ground, then it may, in an appropriate case, adjourn to a shorter date asking the party seeking adjournment to pay costs incurred by the party who got the witnesses produced and was ready to proceed with trial. ...***

Further, Hon'ble Supreme Court in Salem Advocate Bar Assn. (II) v. Union of India, (2005) 6 SCC 344 has ruled:

Para 30: While examining the scope of the proviso to Order 17 Rule 1(1) that more than three adjournments shall not be granted, it is to be kept in view that the proviso to Order 17 Rule 1(2) incorporating clauses (a) to (e) by Act 104 of 1976 has been retained. ***Clause (b) stipulates that no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party.*** The proviso to Order 17 Rule 1(1) and Order 17 Rule 1(2) have to be read together. So read, ***Order 17 does not forbid grant of adjournment where the circumstances are beyond the control of the party.*** In such a case, there is no restriction on the number of adjournments to be granted. ...

Para 31: In some extreme cases, *it may become necessary to grant adjournment despite the fact that three adjournments have already been granted (take the example of the Bhopal gas tragedy, Gujarat earthquake and riots, and devastation on account of the tsunami).* ... The limitation of three adjournments would not apply where adjournment is to be granted on account of circumstances which are beyond the control of a party. ***Even in cases which may not strictly come within the category of circumstances beyond the control of a party, the court by resorting to the provision of higher costs which can also include punitive costs in the discretion of the court, adjournment beyond three can be granted having regard to the injustice that may result on refusal thereof, with reference to peculiar facts of a case. We may, however, add that grant of any adjournment, let alone the first, second or third adjournment, is not a right of a party. The grant of adjournment by a court has to be on a party showing special and extraordinary circumstances. It cannot be in routine.*** While considering the prayer for grant of adjournment, it is necessary to keep in mind the legislative intent to restrict the grant of adjournments.

Hon'ble Bombay High Court in Prafulla V/s Govind, 2017 SCC OnLine Bom 9470 ruled as:

Para 6: It appears, the respondent had complete idea what the trial Court would do to his suit even if he filed yet another application for adjournment and trial Court it appears from the order impugned in this revision application, which is the order passed below application for grant of adjournment (Exhibit 71) dated 26-10-2016, did not disappoint the respondent. The trial Court allowed even this application by only observing that the adjournment was being

granted as a last chance subject to payment of costs of Rs. 500/- with a direction, in case of failure, appropriate orders will be passed. **All these orders passed by the trial Court in the absence of any proof being produced before it in support of ground of illness taken in the adjournment applications only Exhibit complete disregard of the mandate of the provisions of Order XVII, Rule 1 of the Code of Civil Procedure.** Time and again this Court as well as the Hon'ble Apex Court have held that adjournments should not be granted on the mere asking, but on "justifiable cause". The Apex Court in its judgment delivered in Civil Appeal No. 7532 of 2011, Shiv Cotex v. Tirgun Auto Plast P. Ltd. on 30th August 2011 [2012 (2) Mh.L.J. (S.C.) 439] has observed **"When we say 'justifiable cause' what we mean to say is, a cause which is not only 'sufficient cause' as contemplated in sub-rule (1) of Order XVII, Civil Procedure Code but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the Court and such like cause."**

Para 7: Besides above, it is equally well settled law that **sufficient cause is something which is beyond the control of the party seeking adjournment and certainly the Advocate being busy in another Court is not a circumstance which is beyond the control of such party** as held by this Court in the case of Dhanraj Lilaram Motwani v. Rajendra Kumar Dayachand Jain, reported in AIR 1996 Bombay 3.

One argument which may be raised by the litigant/s against whom order/s *qua* non-hearing due to non-appearance get passed that their natural justice (*Audi alteram partem*) was violated and opportunity to explain the arguments before the Tribunal & opportunity to adduce evidence in support of the case was denied. This argument has been nullified by Hon'ble Calcutta High Court in State Fisheries Development Corporation Limited V/s District Magistrate **2019 SCC OnLine Cal 295**, wherein it was ruled:

Para 10: An adjudicating authority is entitled to reject a prayer for adjournment. In the present case, the adjudicating authority did not allow the petitioners' prayer for adjournment. There is no infirmity in the rejection of such prayer. Merely, because the adjudicating authority rejected a prayer for adjournment ipso facto does not mean that, the proceeding stands vitiated by breach of principles of natural justice. **The petitioner was afforded a reasonable opportunity of hearing. The petitioner did not avail of the same. That does not tantamount to the adjudicating authority acting in breach of the principles of natural justice** warranting intervention by the writ Court.

To sum-up, Hon'ble Supreme Court in Sohan Lal Gupta V/s Asha Devi Gupta, **(2003) 7 SCC 492** has settled the discourse on what constitutes as 'Reasonable Opportunity':

Para 23: For constituting a reasonable opportunity, the following conditions are required to be observed:

1. Each party must have notice that the hearing is to take place.
2. Each party must have a reasonable opportunity to be present at the hearing, together with his advisers and witnesses.
3. Each party must have the opportunity to be present throughout the hearing.
4. Each party must have a reasonable opportunity to present evidence and argument in support of his own case.
5. Each party must have a reasonable opportunity to test his opponent's case by cross-examining his witnesses, presenting rebutting evidence and addressing oral argument.
6. The hearing must, unless the contrary is expressly agreed, be the occasion on which the parties present the whole of their evidence and argument.

Part-II

Do feel free to share us your opinion on the Article. For clarifications/queries, do mail us at our E-Mail: contact@vidhilegal.in or pratik@vidhilegal.in. You can also call us at our Landline: 022 4973 3719 or Mobile: +91-9028105899 / +91-7042952905.
