

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: November 25, 2008

Date of Order: December 19, 2008

+CM(M)276/2008

%

19.12.2008

AMAR NATH THR. LR'S

...Petitioner

Through: Mr. Satya Pal, Adv.

Versus

DATA RAM DECD. THR. LR'S

...Respondent

Through: Mr. Ajit Kumar, Adv.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not ?
3. Whether judgment should be reported in Digest ?

JUDGMENT:

1. The petitioner is aggrieved by an order dated 4th January, 2008 whereby an application of the petitioner under Section 151 CPC for recalling an earlier order dated 11th September, 2007 made by the Civil Judge was dismissed.

2. On 11th September, 2007, the matter was fixed for defendant's evidence. When the case was called up in the morning, none appeared for the defendant. The learned Civil Judge passed over the case for 12.00 noon. At 12.00 noon, the

defendant's witness, Sanjay was present and he filed his affidavit and requested for further pass over as his counsel was not available. He also filed an application for filing list of witnesses. The matter was again passed over and was taken up at 2.05 pm. Still counsel for the defendant was not available. The learned Civil Judge observed that the affidavit cannot be tendered by the witness himself. On previous hearing it was made clear that this was to be the last opportunity and DE shall be closed. He therefore closed the DE and fixed the case for final arguments.

3. In the application for recalling this order, defendant stated that the request for adjournment made by the witness of the defendant was wrongly declined by the Court.

4. Counsel for the defendant suddenly developed High Blood Pressure and had to rush to Apollo Hospital, therefore she could not appear. The Court below asked the petitioner to produce the medical record about her treatment at Apollo hospital on that date which was not produced. The Court also observed that the matter was kept pending for waiting for the counsel in the afternoon till 2.05 pm and the third call was given. No plea was taken before the Court that the counsel had developed some ailment. The witness himself had submitted that he was not in a position to tender his affidavit and exhibit

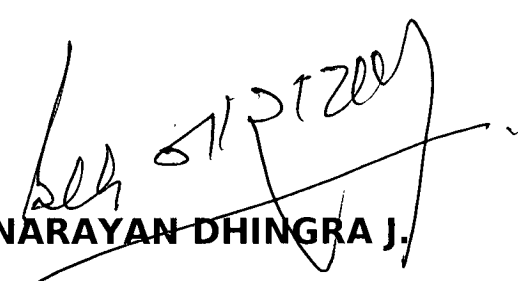
the documents. The previous conduct of the defendant also showed that he had been just delaying the case. The case was of year 1995. The application for recalling the order was dismissed.

5. During the pendency of petition before this Court this Court had asked the defendant's counsel to come forward with any record of treatment of counsel in Apollo hospital on 11th September, 2007. Time was sought by counsel for the petitioner to produce the record but he failed to produce any record in respect of the treatment of the counsel in Apollo hospital. This only shows that the excuse of the counsel having gone to Apollo hospital was a false excuse.

6. When an application is made on the basis of false excuse, I consider the only right course is to reject such an application. In this case, the matter was adjourned for entire DE on 29th March, 2007, then again on 2nd August, 2007 when defendant instead of leading evidence moved an application under Order 18 Rule 17 CPC for recalling PW-1 afresh for further cross examination. This application was dismissed. The petitioner again sought another adjournment and was granted with the specific direction that last and final opportunity was being given for entire defendant's evidence on 11th September, 2007. Despite this neither the petitioner appeared before the

Court nor his counsel appeared before the Court and only a witness was present in the Court who was unable to testify in the Court. I consider that the Court rightly closed the evidence of the defendant. I find no ground to allow this petition. The petition is hereby dismissed.

December 19, 2008
ak


SHIV NARAYAN DHINGRA J.

- Review Petition 61/09 filed.
- Fresh C.M. 1807/09, for stay, filed.