

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) No. 376/2008

% Date of Decision: 24th March, 2008

M/s Verma Sons Petitioner
Through: Mr. Pawan Mathur, Advocate

Versus

\$ Manish Jain Respondent
^ Through:

CORAM:

***HON'BLE MS. JUSTICE VEENA BIRBAL**

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

Veena Birbal, J. (ORAL)

CM No.4299/2008

Allowed, subject to just exceptions.

CM(M) No.376/2008 & CM No.4298/2008

Petitioner has submitted that he has been participating in the suit filed against him by the respondent before Judge, Small Causes Court, Delhi. On 15th May, 2006, petitioner/defendant had moved an application under Section 151 CPC with a prayer to take off from the record evidence of respondent/plaintiff due to non-compliance of precondition imposed vide order dated 07.08.2000. On the said date, he also moved an application under Section 114 Cr. PC for review of order dated 8th May, 2006. On 30th October, 2006, both the applications were dismissed for non-prosecution as

the Senior counsel for the petitioner/defendant had not appeared and the matter was adjourned for final arguments on 29.01.2007. Thereafter, petitioner moved an application under Section 151 CPC for recalling of order dated 30th October, 2006. The Learned Judge after hearing the arguments dismissed the said application vide order dated 11.02.2008. Aggrieved with the same, present petition is filed.

The learned counsel for petitioner has contended that by the impugned order, valuable right of the petitioner/defendant to lead his evidence has been refused. It is contended that there is no intention on the part of the petitioner/defendant to delay the proceedings and Learned Court has erred in holding that the petitioner/defendant is bent upon delaying the disposal of suit.

I have considered the submissions made and have perused the record. Impugned order shows that present is a recovery suit for a sum of Rs. 3,795/- against the defendant and is pending since 1995. From the order sheets available on record, it is noticed that the defendant has not been vigilant in pursuing the matter. It is noted in the impugned order that on 13th May, 2005, petitioner/defendant was proceeded ex parte and the matter was adjourned for final arguments. Thereafter, on 3rd September, 2005, petitioner /defendant had moved an application under Order 9 Rule 7 read with Section 151 CPC. The said application was dismissed by the Court noting that he has not been regularly

appearing in the matter. Aggrieved with the aforesaid order, he had filed the CM(M) No. 626/2006 which was also dismissed as is noted in the impugned order. Thereafter, petitioner/defendant had moved two applications, one under Section 151 CPC wherein he had made a prayer to take of from the record evidence of respondent/plaintiff and the other application under Section 114 CPC wherein prayer was made for review of order dated 8th May, 2006. Both these applications were dismissed vide order dated 30th October, 2006 as the senior counsel who had to argue the matter did not appear on that day. Thereafter, petitioner moved an application under Section 151 CPC for recalling of the aforesaid order which has been dismissed by the Court vide impugned order. Considering the previous conduct of the defendant and that no ground for recalling has been made out, the application was dismissed by learned Court vide impugned order dated 11th February, 2008.

The suit is for recovery of an amount of Rs.3,795/- and is going on for the last 13 years. The impugned order is well reasoned order. No jurisdictional error or illegality is pointed out which call for interference of this Court under Article 227 of the Constitution of India.

Petition stands dismissed.

24th March, 2008
kks

Veena Birbal, J.