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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: September 10, 2008
Date of Order : September 18, 2008

+CM(M) 1452/2007

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18.09.2008

Asha Chhabra

...Petitioner

Through: Mr. S.S. Duggal, Adv.

Versus

Chaman Dhand & Ors.

...Respondents

Through: Mr. B.L. Chawla, 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 has assailed an order dated 21st September, 2007 passed by learned ADJ whereby two applications under Order 9 Rule 9, one filed by the petitioner and other filed by the respondent were allowed. The petitioner had filed an application for restoration of the suit and respondent had filed an application for restoration of the counter claim since both were lying dismissed in default. The petitioner's grievance is that why the counter claim was restored. He is not aggrieved by that part of the order whereby his suit was restored.

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been compared and the digital data is as per
the physical file and no page is missing.

2. A perusal of record shows that on 28.3.2006 when no one appeared for the defendants, the defendants were proceeded ex parte and the case was fixed for ex parte evidence of the plaintiff. On 5th May, 2006, i.e., next date of hearing, an application made by the defendants for setting aside the order which was allowed, subject to costs of Rs.500/- and on the basis of pleadings, the issues were framed in the suit of the petitioner. On 28.3.2006 itself, the counter claim of the respondent which was also pending in the Court was dismissed. However, it seems that while the respondent made an application for setting aside ex parte order in the main suit and same was allowed. On 23rd August, 2006 plaintiff also made an application. The respondent was under impression that counter claim had also been restored. This is reflected from the order dated 23rd August, 2006, when none appeared for the plaintiff and counsel for the defendant was there and suit of the plaintiff was dismissed and at the submission of counsel for the respondent that there was a counter claim, the petitioner was proceeded ex parte in the counter claim and the matter was fixed for ex parte evidence of the defendant in the counter claim. Thus, it is apparent that defendant was under impression that counter claim which was proceeding simultaneously with the suit of the petitioner was

continuing and had not been dismissed. However, afterwards when it came to the notice of the defendant that counter claim was dismissed, the defendant/respondent also made an application for restoration of the counter claim and this application was allowed along with an application of the petitioner for restoration of the suit.

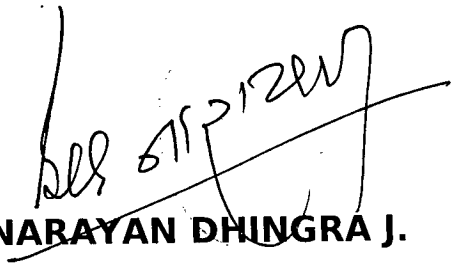
3. I consider that though there was a delay in making an application for restoration of counter claim but this delay was due to impression that proceedings in counter claim and suit were being recorded in the same order sheet of the plaint and there was no separate order sheet of the counter claim was being maintained which is normal before the Trial Court. It is normal that counter claim is not registered as a separate suit and proceedings of the counter claim continued along with the main suit and only one order sheet is recored. Since no separate order sheet was recorded and counter claim had been dismissed this must have known to the respondent that counter claim was lying dismissed and it transpired only later on when the suit itself was dismissed and it was pointed out by the plaintiff that counter claim also stands dismissed.

4. Under these circumstances, I consider the order passed by learned ADJ restoring both suit and counter claim was

justified and was not an illegal order. There is no ground to interfere with the order. The petition is hereby dismissed.

5. The Trial Court record be sent back forthwith.
6. Parties to appear before the Trial on 25th September, 2008.

September 18, 2008
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SHIV NARAYAN DHINGRA J.