

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Order: January 25, 2010

+ CM(M) 96/2010

%

Samay Singh

Through: Mr. Gaurav Vasisht, Advocate

Versus

Mahesh Chand

Through: nemo

25.01.2010

...Petitioner

...Respondent

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?

ORAL

1. By this petition, the petitioner has assailed order dated 9th November 2009 whereby the learned trial court disposed of two applications, one under Order 7 Rule 11 and another under Order 18 Rule 17 CPC. The petitioner by way of present petition has assailed only one order passed on an application under Order 18 Rule 17 CPC wherein the trial court dismissed the application of the petitioner for recalling witness for cross examination.

2. After completion of pleadings issues were framed by the trial court and the matter was listed for plaintiff evidence and the affidavits of evidence were supplied by the plaintiff to the defendant. However, on one hearing the plaintiff's witness did not appear and the cost was imposed on the plaintiff for non appearance of witness and the plaintiff was asked to produce witnesses on next date of hearing. When the witnesses appeared on next date of hearing, the cost was paid by the plaintiff but defendant did not cross examine the witnesses and the matter was adjourned for cross examination of plaintiff witnesses on 27th May, 2009. The counsel for petitioner/ defendant did not appear on 27th May, 2009 for cross examination and the plea taken was that he was out of station. The trial court closed the right of cross

examination on behalf of defendant (petitioner herein) and fixed the matter for defendant's evidence. Despite that order, no affidavit of evidence was filed by the petitioner (defendant before the trial court) and an application under Order 9 rule 7 was made. This application was dismissed and as there was no ex parte order made by the Court, the case was fixed thereafter for arguments.

3. It is submitted by counsel for petitioner that the petitioner could not file affidavits of witnesses due to negligence of previous counsel as defendant was not properly guided by the previous counsel and that is why the defendant changed the counsel.

4. It has become a practice to put a blame on the previous counsel of negligence without making a complaint against the previous counsel to the Bar Council. In the present case also it is found that the allegations were made against the previous counsel of being negligent but no complaint to Bar Council was made. That only shows that there was in fact a deliberate effort to prolong the case and send witnesses back with help of counsel advice or he would have asked the counsel to refund his fee or would have made complaints against the counsel.

5. In my opinion, the interest of justice is not in allowing one after another opportunity to the erring party and allowing judicial proceedings to be a tool for harassment either of the plaintiff or of the witness. The plaintiff in this case was imposed costs for not producing witnesses on one hearing and when he produced the witnesses, the witnesses were not cross examined despite two opportunities and thereafter defendant/ did not produce his own witnesses.

6. I, therefore, find no merits in the petition. The petition is hereby dismissed without there being any orders for costs.

January 25, 2010
rd

SHIV NARAYAN DHINGRA J.