

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

Date of Reserve: 20th January, 2010
Date of Order: January 25, 2010

CM(M) No. 74/2010

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25.01.2010

M/s Frontier Biscuit Factory (P) Ltd.

... Petitioner

Through: Mr. A.K.Goel, & Mr. Rajeev Kumar, Advocates

Versus

Nitin Sethi

... Respondents

Through: Mr. Nitin Gupta, Advocate

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?

ORDER

This petition has been preferred by the petitioner against the order dated 19th March, 2009 passed by the learned ADJ on an application of the petitioner under Section 10 & 12 of the Contempt of Court Act and on another application filed on behalf of the respondent under Section 151 read with Section 144 CPC.

2. The petitioner and the respondent are manufactures of biscuits. There was a suit filed by the petitioner against respondent regarding violation of its trademark etc. During pendency of the suit, a compromise was arrived at between the parties and an application under Order 23 Rule 3 read with Section 151 CPC was made. This compromise was taken on record of the Court and the suit of the parties was decreed in terms of compromise. The petitioner filed Contempt Petition making allegations that the respondent committed violation/breach of the compromise decree and was liable for contempt. It was submitted that respondent viz. Om Frontier Biscuit Company used some of the packing materials bearing trademark which the respondent had agreed not to use in terms of the compromise. The respondent was only to use trademark "OM FRONTASIA" and respondent was to withdraw application for registration of the trademark "OM FRONTIER", and destroy the entire packaging material etc. bearing trademark "OM FRONTIER".

3. The decree specifically provided that in case of any breach of the compromise the petitioner would be entitled to liquidated damages of Rs.4 lac.

4. The trial Court after discussing the stand taken by both the parties came to the conclusion that in view of the specific clause in the compromise decree about the liability to pay damages by the respondent, the petitioner was not supposed to rush to the Court with contempt application but had to avail the remedy to ask for liquidated damages.

5. It is settled law that Contempt proceedings cannot be used for execution of the decrees. For execution of decrees, the proper course available to the party is filing of an Execution Petition. In the present case, the decree was passed in terms of the compromise arrived at between the parties and if the petitioner was aggrieved about breach of the terms of compromise, the execution was the proper remedy available and the petitioner could have asked for the damages as provided in the compromise in case of breach of terms of the compromise.

I find no infirmity in the order of the Trial Court. The petition is hereby dismissed.

January 25, 2010
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SHIV NARAYAN DHINGRA, J.