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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: January 18, 2010
Date of Order: February 24, 2010

+ CM(M) 919/2003

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24.02.2010

M/s Delton Cables Ltd.

...Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate with Mr. Harpreet Singh, Mr. Rajesh Gupta,
Mr. M.Z. Chaudhary and Ms. Roopa Dayal, Advocates

Versus

Kishore Kumar Sharma & Ors.

...Respondents

Through: Mr. V.K. Srivastava, 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?

JUDGMENT

1. Respondent filed a suit for recovery of tenanted premises from the petitioner after determining the tenancy in November 1994. The written statement was filed by the petitioner before the trial court in December 1996. The issues were framed by the trial court on 5th March, 1998 and thereafter ensued a game by petitioner of delaying the proceedings. On 16th November, 1998, the petitioner moved first application under Order VI Rule 17 CPC seeking to amend the written statement on the allegations that during pendency of the suit with a view to reach an amicable settlement with the respondent, petitioner had negotiated and increased the rent of the premises and respondent/ plaintiff agreed to this increase in rent from Rs.4,000/- to Rs.10,000/- per month and pursuant thereto a fresh lease deed was to be executed between the parties. However, plaintiff resiled from this compromise and the petitioner wished to make a counterclaim for specific performance of the alleged oral agreement arrived at between the parties of compromise and the petitioner wanted to amend the written statement to incorporate these facts. This application was dismissed by the learned trial court on 7th January 1999. The evidence of the plaintiff was closed in this case on 22nd August, 2001. Soon thereafter, petitioner made second application under Order VI Rule 17 CPC for amendment of written statement seeking to incorporate certain preliminary objections in the written statement alleging that the premises was not under one tenancy but there were two separate and independent tenancies qua suit premises in favour of each co-owner and the rent of these two separate tenancies was less than Rs.3,000/- hence the Civil Court had no jurisdiction and the suit was not entertainable by the Civil Court.

This second application for amendment was dismissed by the learned trial court on 18th March, 2002. The petitioner then preferred a Civil Revision against this dismissal of the application under Order VI Rule 17 CPC before this Court being CR No.1124 of 2002 and this was dismissed by this Court on 19th December, 2002. The defendant/ petitioner again played truant before the trial court and did not produce the witnesses. The defendant's evidence was closed vide order dated 31st March, 2003 and the suit was listed for final arguments for several dates before the trial court but the petitioner/ defendant did not either address arguments or did not conclude the same on one or the other grounds and dragged the suit. Defendant/ petitioner filed another application under Order VI Rule 17 CPC alleging therein that as per the information of defendant, there was a clause in the tenancy document dated 1st July, 1982 that the tenancy of the defendant/ petitioner was a perpetual and non-terminable tenancy and defendant/petitioner was entitled to remain in the suit premises perpetually on payment of rent and could continue to enjoy the suit premises as long as it wished and the suit was not maintainable and liable to be dismissed. This application was dismissed by the trial court on 21st May, 2003. The defendant was not satisfied so far with his efforts to drag the proceedings and filed fourth application under Order VI Rule 17 CPC for amendment of written statement on the ground that the new company secretary Mr. B.K. Sharma appointed by the petitioner/ defendant when took over the case file from earlier secretary Mr. Vijay Sharma who had left services, he discovered that several original documents pertaining to the case had not been filed, so he wanted to place on record the original notice dated 10th September, 1979, original legal notice dated 9th July, 1981, one 23rd December, 1981 letter, another letter dated 22nd June, 1982, another letter dated 3rd July, 1982, a carbon copy of agreement dated 6th July, 1982 and an incomplete handwritten papers. It was submitted that these documents were necessary for adjudication of the suit and the defendant (petitioner herein) should be allowed to place these documents on record and be allowed to amend the written statement and to incorporate a plea that under Section 53A TPA Act defendant can take benefit of the terms and conditions of the agreement dated 6th July, 1982 which may create a perpetual lease deed in favour of the petitioner. The learned trial court after noting the history of the case observed that the alleged agreement relied upon by the petitioner was admittedly an unregistered document and could not be read in evidence in view of Section 17 read with Section 49 of the Registration Act. It was observed by the trial court that the possession of the petitioner was not in dispute and defendant/petitioner cannot now be allowed to rely on a document which cannot even be read in evidence. It was also observed that this document in no way could help in adjudicating the issue whether the petitioner's tenancy had been terminated and whether the petitioner/ defendant was entitled to take possession.

2. It is argued by the counsel for petitioner that the law relating to amendment of the written statement was very liberal and the contradictory proposition could be taken in the written

statement. He relied upon certain judgment of the Supreme Court to substantiate this plea. I consider that howsoever liberal be the law in respect of amendment of the written statement, laid down by the Supreme Court or this Court, that does not give a license to the petitioner to act malafidely and to file application after application for amendment of the written statement. No provision of Civil Procedure Code can be allowed to be misused by the Courts so as to frustrate the trial itself. In this case, the provisions of Order VI Rule 17 CPC have been grossly misused by the petitioner by filing one after another frivolous application under Order VI Rule 17 CPC taking frivolous and untenable pleas. The petitioner in this case has succeeded in delaying the trial of this case by seven long years just by filing applications under Order VI Rule 17 CPC and thereafter filing petition under Article 227 before this Court which unfortunately due to peculiarity of our judicial system remained pending for so long. This case is glaring example as to how a party can take liberty with law and misuse it.

3. The petitioner's moving fourth application under Order VI Rule 17 CPC was another exercise in perpetuating his efforts to prolong the case so as to enjoy the possession of the premises by litigating and prolonging the litigation and reap the fruits of the litigation and depriving the original owner of the benefits of his property.

4. I consider that the present petition deserves to be dismissed with exemplary costs. For each year's delay caused by the petitioner, the petitioner must suffer a cost of Rs.50,000/-. The present petition is hereby dismissed with costs of Rs.3,50,000/- to be paid by the petitioner to the respondent (plaintiff before the trial court).

Trial court record be sent back forthwith. The trial court is directed to dispose of the petition after hearing arguments of the parties within a period of two months after receipt of this order.

February 24, 2010
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SHIV NARAYAN DHINGRA J.