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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: January 18, 2009
Date of Order: February 08, 2010

+ CM(M) 189/2009

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Shri Charanjit Sharma
Through: Mr. Rajiv Shukla, Advocate

08.02.2010
...Petitioner

Versus

Shri Bal Kishan
Through: Mr. Rajinder Dhawan, Mr. B.S. Rana and Mr. Shafali Dhawan, Advocates

...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?

JUDGMENT

1. By this petition, the petitioner has assailed an order dated 24th May, 2008 passed by learned trial court whereby the trial court refused to grant adjournment to the petitioner's counsel for cross examination of witnesses.

2. Brief facts relevant for the purpose of deciding the present petition are that the petitioner is a defendant before the trial court in Suit No.374 of 2008 (pending since 1984). On 24th May, 2008, the case was listed for cross examination of PW-1 whose part cross examination was recorded on 15th March, 1995. The counsel for the petitioner moved an application for adjournment on the ground that the petitioner had gone to Ambala Court and he was not in a position to cross examine the witness without presence of petitioner who was to give instructions to him during cross examination. The trial court after noting down the manner in which the case has been adjourned from time to time, refused to allow the adjournment application and dismissed the same with costs of Rs.1,000/-. After dismissal of the application with costs, the counsel for the petitioner showed willingness given to cross examine the witness and he cross examined the witness. After cross examination of witness, the PE was closed and the matter was

listed for defendant's evidence.

3. The contention of the petitioner is that the learned trial court wrongly disallowed the application for adjournment since the counsel in absence of client could not effectively cross examine the witness and many important questions were left and he, therefore, wanted the order to be recalled and the witness also to be recalled.

4. It is not in dispute that the date of cross examination of this witness was given in advance. The petitioner knew the date of cross examination. If he got another case in Ambala fixed on the same date and had to attend the Ambala Court, he could have given instructions to his counsel well-in-advance on the points and issues on which the witness was to be cross examined. His being busy in another court was no ground for adjournment. Moreover, the counsel in this case was also obliged to prepare for cross examination of witness well-in-advance and do cross examination as per instructions of his client. A witness cannot be allowed to be recalled on the ground that he was not effectively cross examined due to absence of the petitioner.

5. In the result, I find no force in this petition. The petition is hereby dismissed with costs of Rs.10,000/-.

February 08, 2010
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SHIV NARAYAN DHINGRA J.