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IN THE HIGH COURT OF DELHI AT NEW DELHI

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F.A.O. No.722 of 2002 & C.M. Appl. Nos.17296-17298 of 2009

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24.05.2010

NATIONAL INSURANCE COMPANY Appellant
Through: Mr. Kamal Deep, Advocate.

Versus

ATAM PARKASH & ORS. Respondents
Through: Ms. Aruna Mehta, Advocate.

Reserved on: 19th May, 2010
Pronounced on: 24th May, 2010

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?

J U D G M E N T

1. This appeal has been filed by insurance company against award dated 31st August, 2003 passed by the Tribunal along with an application under Order 41 Rule 27 CPC. Notice of this appeal was served upon respondents/claimants and the claimants filed their reply to the appeal on 21st November, 2006 opposing the appeal. It was stated in the reply that the appeal was baseless and was liable to be dismissed and the Tribunal rightly passed the claim against the appellant and in favour of the respondents.

2. The application of the appellant under Order 41 Rule 27 CPC for leading additional evidence was dismissed by this court vide order dated 14th May, 2008 with costs of Rs.5,000/- to be paid to Delhi High Court Legal Services Authority. While the matter was pending for final disposal of the appeal, the respondents/claimants filed cross-objections on 8th September, 2009 under Order 41 Rule 22 CPC along with an application

for condonation of delay seeking condonation of delay of 2459 days and another application for seeking condonation of 60 days delay in re-filing the cross-objections.

3. Learned counsel for the appellant appeared and stated that in view of the fact that application under Order 41 Rule 27 CPC for additional evidence was dismissed, nothing survived in the appeal as the entire appeal was based on the hope that the court will allow application under Order 41 Rule 27 CPC for additional evidence. The appeal filed by the appellant is, therefore, liable to be dismissed as it is not pressed.

4. The cross-objections filed by the appellant under Order 41 Rule 22 CPC are highly belated. The cross-objections could have been filed within 30 days of receipt of notice. The plea taken in the application for condonation of delay is that the counsel for the objectors was under *bona fide* belief that cross-objections under Order 41 Rule 22 CPC had been filed with the Registry and would be tagged with the file. This plea is absurd plea in view of the reply filed by the objectors to the appeal wherein there is no mention of filing of cross-objections or intention to file cross-objections. The ground taken for condonation of delay is false and frivolous. I find no reason to entertain this application under Section 5 of Limitation Act. The application under Section 5 of Limitation Act for filing cross-objections is hereby dismissed being a frivolous application.

5. The cross-objections are dismissed. The appeal also stands dismissed.

SHIV NARAYAN DHINGRA J.

MAY 24, 2010
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