

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

+ **FAO 56/2010**

Date of Decision: 01.11.2010

MEHOOL H. BHUVA & ANR. Appellants
Through: Mr. Sunil Bainsla, Adv.

versus

VANDANA H. BHUVA & ANR. Respondents
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

: **MOOL CHAND GARG,J (Oral)**

C.M.3083/2010

Exemptions allowed subject to all just exceptions.

FAO 56/2010

1. This order shall dispose of the appeal filed by the appellant under Order 43 Rule 1(C) for setting aside the order dated 10.09.2009 passed by the learned ADJ, Delhi whereby the application filed by the appellant under Order 9 Rule 9 read with Section 151 of the CPC was dismissed. It may be observed here that this appeal had been filed by the appellant earlier before the learned ADJ against a judgment and order dated 03.08.2002 which was decided against the appellant on 01.12.2004 dismissing the same on account of non-appearance of the appellant in that case. According to the appellant, even though he had engaged a counsel to file and contest the appeal but the appellant was not informed by his counsel regarding dismissal of the present appeal. It was also stated that the counsel appointed by him had advised and assured him that they shall be representing his appeal and, therefore, he was under *bonafide* belief that counsel would take care of his appeal and would appear and contest the appeal diligently and vigilantly. It was also stated that in December, 2007 the appellant was suffering

was informed about the fact that the counsel engaged by the appellant have withdrawn from the case. Sufficient time was given to the appellant to act upon the letter and either appear himself in person or engage any counsel. It seems that the appellant is casual and careless therefore, neither the appellant nor his counsel has appeared throughout the day today. It is 2:20pm. Appeal stands dismissed in default. File be consigned to record room.

Sd/-
ADJ, Delhi
1.12.2004”

11. Perusal of the record further shows that the present appeal was previously listed for hearing on 23.11.2004. On the said date, Ms. Neelam Singh, Adv. for the appellant sought her discharge from the appeal and she moved an application for discharge of the counsel for the appellant along with her affidavit and she also filed some documents on record and sought some time to inform about the next date of hearing of the appeal to the applicant and on her request it was directed by the Id. Predecessor of this Court that the counsel for the appellant shall do the needful to inform the appellant about her prayer for being discharged from the present appeal. The order dated 23.11.2004 is reproduced below for ready reference:

“23.11.04. Ms. Neelam Singh Adv. for the appellant seeks her discharge, filed application, and documents today. She seeks to inform the next date to the parties. Be awaited

Sd/-

Later: None for appellant
Sh. Deepak Gupta, Adv. for respondent
No.1 G.A. for respondent No.2.

As the counsel for the appellant has yet to inform the next date..... one opp. is given to the counsel to do the needful albeit it should have been done on the last date of hearing itself especially when it was 5th Nov. and letter/fax was sent on 6th Nov. List on 1.12.2004 for further proceedings

Sd/-
ADJ, Delhi.”

12. Perusal of the record further shows that the Id. Previous counsel for the applicant has filed on record the photocopies of the letter dated 1.11.2004, and the letter dated 6.11.2004 along with the photocopy of the

confirmation report of fax dated 6.11.2004, vide which the counsel for the appellant had given intimation to the applicant regarding the date of hearing and their willingness for discharge from this case, because the applicant has not paid them their professional charges.

13. From the perusal of the record it is further observed that the previous counsels for the applicant had duly informed the applicant about the date of hearing of the appeal vide fax dated 6.11.2004 and the applicant had not stated a single word that the fax were not received by the applicant at his office. On the contrary, it has been stated that the previous counsel for the applicant has not given any information to the applicant about the date of hearing of the present appeal. It is not denied by the applicant that the fax was not sent by the previous counsel of the applicant that the fax was not sent by the previous counsel of the applicant at the correct official telephone number of the applicant. Further more, the applicant has very clearly taken a ground for his absence for the period with effect from December, 2004 to August, 2007 as his illness and various medical problems and several diseases, but the applicant has not placed on record, even a single medical document prescription, about his illness during the said period.

14. In the totality of the circumstances and in view of the material on record, I am of the considered opinion that the applicant has deliberately and willfully taken a false and frivolous ground in present applications. From the record, it is also clear that the applicants have themselves not taken appropriate steps and have not pursued the appeal vigilantly. The reasons stated in the present applications, in the considered opinion of this Court are, unacceptable as the same are false and frivolous and are not sufficient to condone the delay. Therefore, I do not find any merit in the present applications and the same are hereby dismissed.”

5. During the course of the arguments, I enquired from the learned counsel for the appellant as to whether he gave any notice to his counsel about his conduct in having not appeared when the case was listed or having not informed him about withdrawing from the case. I also enquired as to whether any complaint has been filed against counsel before Bar Council of Delhi. Both these questions have been answered in the negative.

6. I do not find that there is any need to interfere with the findings of facts returned by the learned ADJ in the absence of any cogent explanation furnished by the appellant for condoning the delay. The ADJ is right in having dismissed the application under Order 9 Rule 9

of the CPC. Even otherwise, the appellant has not been able to show any equity for permitting him to contest the proceedings as not even a single document has been shown which may establish his title or interest in the property in question. The sequence of events mentioned by him in his list of dates filed along with the appeal also casts aspersions on the veracity of the appellant and the events as stated are not believable and rather contradictory as sometimes the appellant talks of an illegal/sham agreement, then he talks of rent agreement, then he talks of unauthorized occupation and filing of the suit and coming back after more than 2 years of the passing of the impugned judgment.

7. Taking into consideration all these facts and circumstance, the appeal is dismissed.

8. No costs.

10. A copy of this order be sent to the trial Court

MOOL CHAND GARG,J

NOVEMBER 01, 2010

'anb'