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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.207 of 2010 & C.M. Appl. Nos.2655-2656 of 2010

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11.02.2010

RAKESH PANDEY

.....Petitioner

Through: Mr. Pranav Puri, Advocate.

Versus

KULJEET SINGH KOCHAR & ORS.

.....Respondents

Through: Ms. Mini Pushkarna, standing counsel for
MCD.

Date of Order: 11th February, 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 (O R A L)

1. By this petition, the petitioner has assailed an order dated 3rd February, 2010 whereby an application of the petitioner under Section 151 CPC was dismissed by the trial court. By this application, the petitioner wanted the court to restore a suit earlier dismissed as withdrawn by the petitioner. Counsel for the petitioner had made a statement before the court on 16th December, 2009 to the following effect :-

“I have instructions to withdraw the present suit on behalf of the Plaintiff as the same stands satisfied as MCD has taken the action and at present there is no illegal construction or encroachment over the suit property. I may be permitted to withdraw the present suit as the same stands satisfied.”

2. After this statement of counsel for the petitioner, the suit was dismissed as withdrawn. The petitioner thereafter wanted to re-open the case stating that the statement was made by his counsel in view of the defence taken that there was no illegal

construction nor illegal construction would be put but later on. The petitioner however, noticed that there was fresh illegal construction made in the premises in connivance with MCD so, he wanted to get the suit revived. Subsequently, the petitioner changed his stand and told the court that his counsel was not given instructions to make a statement for withdrawal of the suit and counsel acted contrary to the instructions. The learned trial court keeping in view the changing stand taken by the petitioner found that the application under Section 151 CPC was not maintainable and observed that in case, there was any fresh illegal construction, the plaintiff was at liberty to file a fresh suit.

3. The present petition and the suit seems to be gross misuse of judicial process. The petitioner first withdrew the suit against illegal constructions going on in his neighbourhood. It is not known what transpired between the petitioner and the defendant against whom the petitioner had filed the suit and was contesting tooth and nail that resulted into withdrawal of the suit on behalf of the petitioner. It is possible that the petitioner had reached at an 'understanding' with the defendants. It seems that thereafter when some dispute again arose between the petitioner and the defendant over this 'understanding', the petitioner wanted to revive the suit. It is clear that the petitioner was using the court proceedings as a tool against the defendants and the petitioner in reality had no grievance against any kind of illegal constructions. I, therefore, dismiss this petition with cost of Rs.10,000/- to be deposited with Delhi Legal Services Authority.

SHIV NARAYAN DHINGRA J.

FEBRUARY 11, 2010
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