

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

Date of Reserve: 8th February, 2010
Date of Order: 16th February, 2010

CM (M) No. 475/2007

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16.02.2010

Madan Lal Maurya

... Petitioner

Through: Mr. Dinesh Goyal, Advocate

Versus

Pratap Singh

... Respondents

Through: Mr. R.L.Sharma, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

By this petition, the petitioner has assailed order dated 7th December, 2006 whereby application under Order 9 Rule 7 CPC made by the petitioner (defendant no.2 before the trial Court) was dismissed by the learned Civil Judge. The petitioner in this case is Madan Lal Maurya. There is no dispute that his name is Madan Lal Maurya. In the suit filed by the respondent herein, the petitioner was described as Shri Rajender Maurya s/o Madan Lal Maurya. When the summons were sent at the address of the petitioner he refused to receive the summons specifically stating that Madan Lal Maurya had no son in the name of Rajender Maurya and no Rajender Maurya lived at the premises. After this report the respondent amended the title of the suit and described the petitioner as Rajender Maurya @ Madan Lal Maurya. The petitioner categorically again stated that he was Madan Lal Maurya and not Rajender Maurya and it was not his alias name and refused to accept the summons issued in the name of Rajender Maurya @ Madan Lal Maurya. The summons were ordered to be served through pasting and thereafter the petitioner was proceeded ex parte.

2. All these facts have been noted by the Court below. However, the Court below observed that since the summons were pasted at the address of the petitioner and the petitioner knew that these proceedings were against him, he

deliberately did not appear and did not allow the application under Order 9 Rule 7 CPC.

3. I consider that it was the obligation of the respondent (plaintiff in the Court below) to serve summons on the correct person. If the name of the petitioner was Madan Lal Maurya, there was no reason for the petitioner to accept summons in the name of Rajender Maurya. He could have accepted summons only if the summons were issued by the Court in his own name. If there was any confusion in the mind of the respondent/plaintiff about the name of the defendant no.2/petitioner, the respondent should have got that confusion removed first, found out the correct name of the defendant no.2 and made Madan Lal Maurya as a party. If a person is known only by one name, summons cannot be sent to him in two names nor can it be expected that summons sent in another person's name should be received by the person and then he should come and face the proceedings.

4. I, therefore consider that the trial Court should have allowed the application under Order 9 Rule 7 CPC simply on the ground that the name of the petitioner was not correctly stated by the respondent in the suit. I hereby allow this petition. The order dated 7th December, 2006 of the learned trial Court is set aside. The application of the petitioner under Order 9 Rule 7 CPC stands allowed.

The petitioner shall appear before the trial Court on 4th March, 2010 and shall participate in the proceedings. The respondent shall also correct name of the petitioner in the suit as Madan Lal Maurya.

February 16, 2010
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SHIV NARAYAN DHINGRA, J.