

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

Date of Reserve: 8th March, 2010

Date of Order: 12th March, 2010

CM(M) No. 267/2010

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12.03.2010

Niranjan Kumar

... Petitioner

Through: Mr. Shahid Azad, Advocate

Versus

Poonam Chawla

... Respondent

Through: Mr. K.R.Chawla, Advocate

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

By this petition, the petitioner has assailed an order dated 3rd November, 2009 whereby an application of the petitioner under Section 151 CPC for allowing him to lead defence was dismissed. The brief facts necessary for disposal of this petition as stated by the trial Court are as under:

Briefly, suit for possession, recovery of arrears of rent and damages was filed by plaintiff claiming himself as the owner of the property and the defendant as a tenant. Vide order dated 28.3.2005, the learned Predecessor allowed an application under Order 39 Rule 10 CPC filed by plaintiff, thereby directing the defendant to deposit the arrears of rent @ Rs.12,000/- per month and to pay the future rent month to month. The order was not complied with an application was moved for extension of time. Extension of time was granted for compliance of the order. Again, order was not complied by the defendant and application for extension of time was filed. Vide order dated 25.7.2005, the learned Predecessor dismissed the application, observing that the time could have been extended for a period of 30 days in accordance with Section 148 CPC and further extension of time was not permissible under Section 148 of CPC. Accordingly, the application for extension of time for compliance of order was dismissed and the defence was struck off. Order dated 25.7.2005 was challenged before the Hon'ble High Court of Delhi in CM(M) No. 2545/2005. Vide order dated 24.10.2005 the Hon'ble High

Court dismissed the petition. The order was challenged before the Hon'ble Supreme Court. Vide order dated 17.10.2006 the Hon'ble Supreme Court dismissed SLP(C) No. 25073 of 2005. The order of the learned Predecessor striking out defence reached to finality by the order of Hon'ble Supreme Court. Vide order dated 29.7.2008 in CM(M) No. 374/2008, the Hon'ble High Court directed the defendant to deposit the arrears of user charges, but the findings in respect of striking off defence by this court was not changed.

2. It is submitted by the Counsel for the petitioner that since the petitioner had deposited the rent/user charges later on after taking liberty from the Court the petitioner was entitled to defend the suit.

3. The plea taken by the petitioner is misconceived. The petitioner's defence was struck off by the trial Court as far back as on 25th July, 2005. This order of the trial Court was assailed by the petitioner right up to Supreme Court and this order became final. This order of striking off defence, which attained finality upto Supreme Court, could not have been set aside either by the High Court or by the trial Court. The petitioner was given liberty to make payment of the rent/user charges without prejudice to the rights of the parties. The right which had accrued to the respondent was not taken away.

4. The order of the trial Court is within jurisdiction and I find no reason to interfere with the order. The petition is hereby dismissed.

March 12, 2010
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SHIV NARAYAN DHINGRA, J.