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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.286 of 2010 & C.M. Appl. No.3968 of 2010

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08.03.2010

SANJEEV ARORA & ANR.

.....Petitioners

Through: Ms. Savita Rustagi, Advocate.

Versus

PT. MANOHAR LAL DUBEY & ORS.

.....Respondents

Date of Reserve: 3rd March, 2010

Date of Order: March 08, 2010

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.

J U D G M E N T

1. By this petition, the petitioners have assailed order dated 28th January, 2010 whereby an application of the petitioners under Order 47 read with Section 151 CPC for review of order dated 27th October, 2009 was dismissed. The contention of the petitioners is that the learned trial court wrongly recorded the proceedings of 27th October, 2009 and thereafter refused to recall the order.

2. A perusal of order dated 27th October, 2009 shows that on that day, the matter was listed for plaintiff's evidence. Two witnesses of the plaintiff, namely, PW-1 Ramakant and PW-2 Ravi Shankar, were present. In the morning when the case was called, counsel for defendants/petitioners was present and she was directed to cross-examine the witness. Affidavits of both the plaintiff witnesses were tendered in evidence as examination-in-chief, however, on request of counsel for the petitioners/defendants, the matter was kept

pending till 12:30 p.m. When the matter was again recalled at 12:30 p.m., it was reported to the court that counsel for the petitioners had left for attending another case in Noida, U.P. The court, therefore, closed the right of the defendants to cross-examine PW-1 and PW-2.

3. In the review application, counsel alleged that the court did not record the proceedings correctly. She alleged that in the morning when the case was called, she appeared along with her client and the trial court directed the parties as well as their counsels to appear at 11:30 a.m. for recording evidence of witnesses. She made a request to record the evidence in the morning itself or to adjourn the suit for 2 p.m. as she had to attend a case before District Judge, Noida. The trial court did not pay heed to her request and passed over the case for 11:30 a.m. In the meantime, she received a phone call from Noida Court client and left the court in haste. At 11:30 a.m., when the petitioners' representative made a request to the court to pass over the matter for 2 p.m., the court recorded examination-in-chief of the witness without paying any heed to the request made by the petitioners of passing over the matter for 2 p.m. and closed the cross-examination at 12:30 p.m.

4. The trial court noted these facts in its order dated 28th January, 2010 and after perusal of record observed that on 27th October, 2009, the case was fixed for recording compromise between the parties, if any, alternatively for plaintiffs' evidence as last and final opportunity. It was specifically recorded in the order that counsel for the defendants (petitioners herein) was present in the morning and at the first call, she was asked to cross-examine the witness but she wanted a pass over. At the request of counsel, the matter was kept pending till 12:30 p.m. and thereafter, it was reported that she had left for attending Noida Court in some other case. The court observed that the allegations made

in the application of not recording true proceedings of the court were baseless and he dismissed the application finding no merits in the application.

5. The judicial record of proceedings as maintained by the courts is always considered authentic version of the proceedings of the day. No court can memorize the orders passed by it in several cases on a particular day and that is the reason that the order sheet has to record what transpired in the proceedings on that day. The court is bound to believe the judicial record and any allegation about record not being correct cannot be trusted and believed. The trial court, therefore, rightly observed that the petitioners made false accusation of not maintaining the record properly.

6. The matters are called by the trial court as per cause list. Since this matter was fixed for recording compromise and alternatively for recording evidence, the matter was called in the morning for recording evidence of the plaintiffs' witnesses. It is not the case of counsel for the petitioners that witnesses were not present. Since the witnesses and the counsel were present, there was no occasion for the trial court to pass over the matter for 11:30 a.m. or for any subsequent time as alleged by the counsel. It only seems that counsel for the petitioners, who had to rush to Noida court, asked the court to pass over the matter for 12:30 p.m. and went away to Noida court hoping that she will be back by that time. Since, she was not back by 12:30 p.m., the court did not consider it proper to wait for her and closed the cross-examination. It is apparent that later on, she in the review application made false allegations.

7. Where a counsel chooses to practice in different States around Delhi, the counsel cannot expect the court to keep waiting for her till she is finished with her business in Noida, Gurgaon, Ghaziabad, Faridabad or Bahadurgarh Courts, the areas which are

surrounding Delhi. It is for the counsel to choose where he/she has to practice and if he/she has to practice in Delhi, he/she has to be available in Delhi court on the day her case is fixed. Passing over a matter for an hour or so is an accommodation which can be given by the court but the court is not supposed to wait for counsel to get free from her case outside Delhi and then conduct case in Delhi. The witnesses cannot be made to dance to the tune of counsel dictates and kept waiting in the court from 10 a.m. onwards so that when the counsel is free from other State, she will come and show mercy on the witnesses in cross-examining them.

8. I find no merits in this petition. The petition is hereby dismissed.

SHIV NARAYAN DHINGRA J.

MARCH 08, 2010
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