

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

Date of Order: 11<sup>th</sup> March, 2010

**CM(M) No. 334/2010**

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**11.03.2010**

**Marry Fernandese**

**... Petitioner**

Through: Mr. Rajender Singh Negi, Advocate

Versus

**Shri J.P.Gupta & Anr.**

**... Respondents**

Through: Ms. Mini Pushkarna, Advocate for MCD/R-2

**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 (ORAL)**

By this petition under Article 227 of the Constitution of India, the petitioner has assailed an order dated 26<sup>th</sup> November, 2009 of the Appellate Court whereby the Appellate Court dismissed an appeal of the petitioner against an order of the trial Court dismissing an application under Order 9 Rule 4 CPC.

2. Brief facts are that the petitioner had filed a suit for permanent injunction against respondent no.1 before the trial Court. While this suit was pending, the petitioner also preferred a Writ Petition for the same relief before the High Court and the petitioner made a statement before the trial Court that she did not want to continue with the suit and her suit be dismissed as withdrawn. On her this statement, the suit was dismissed as withdrawn on 9<sup>th</sup> February, 2009. The Writ Petition of the petitioner was dismissed by the High Court. The petitioner thereafter made an application before the trial Court for revival of the suit on the ground that she was wrongly advised by her Counsel to withdraw the suit. The trial Court

dismissed this application observing that the petitioner had put entire blame on the previous counsel without naming him and without making any complaint against the previous counsel for giving wrong advice. The trial Court also observed that once the suit has been dismissed as withdrawn voluntarily without any force or coercion, the same could not be restored. The petitioner preferred appeal which was also dismissed by the Appellate Court noting the conduct of the petitioner in not disclosing to the Courts below about the pendency of other proceedings and also on the ground that the conduct of the petitioner as well as her daughter was such that they were playing mischief to get the alleged relief by hook or by crook and they had even gone to the extent of leveling allegations against the trial Court.

3. The Counsel for the petitioner has failed to show any jurisdictional error in the order passed by the Courts below. Once a suit is withdrawn by a plaintiff voluntarily without any force or coercion, the same cannot be revived by the plaintiff on the ground that he/she withdrew it under wrong advice.

The petition is hereby dismissed.

**March 11, 2010**  
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**SHIV NARAYAN DHINGRA, J.**