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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.302 of 2010 & C.M. Appl. No.4127 of 2010

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15.03.2010

PARIKSHIT RAJ MEHRA

.....Petitioner

Through: Mr. N.S. Vashisht, Advocate.

Versus

M/S. SERVICE PRESS PUBLICATION PVT. LTD. & ORS. Respondents

Through: Mr. Vinod Wadhwa, Advocate for R-5.

Date of Reserve: 5th March, 2010

Date of Order: March 15, 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

1. By this petition, the petitioner has assailed an order dated 3rd October, 2008 whereby an application of the petitioner under Order IX Rule 9 CPC for restoration of the suit was dismissed.

2. Brief facts relevant for the purpose of deciding this petition are that the petitioner had filed a suit before the High Court for declaration and mandatory injunction. This suit was transferred in the year 2003 to the District Court due to increase in pecuniary jurisdiction of District Courts. The District Judge after receipt of the case from the High Court assigned the case to an Additional District Judge vide order dated 23rd July, 2003. Since none appeared for the petitioner before the Additional District Judge, he issued notice to the plaintiff/petitioner for appearance. When none appeared for the petitioner despite issuance of notices, the suit was dismissed in default on 23rd February, 2005. The

petitioner made an application for restoration of the suit on 15th December, 2007, that is, after delay of two years seven months and twenty one days whereas the period of limitation for moving such an application is only 30 days. The plea taken by the petitioner before the trial court was that the court notices were sent by the court at 40, Khan Market, New Delhi while the petitioner had already vacated this premises. He, therefore, did not receive the court notices. Counsel for the petitioner did not inform him about the proceedings or the notices received by him. The present counsel for the petitioner traced out the status of the case on 11th December, 2007. He inspected the record on 12th December, 2007 and then made an application for restoration on 15th December, 2007 and then this application was filed. The trial court dismissed this application on the ground that the petitioner had failed to show any legitimate and reasonable cause either for condonation of delay or for non-appearance in the court. The trial court also observed that the court notices were not only issued to the petitioner but were also issued and received by counsel for the petitioner viz. Dr. Surat Singh. The notice on the plaintiff/petitioner was served at the address furnished by him in the court, by affixation also, therefore, there was no ground for condoning the delay despite the law for condonation of delay being quite liberal. It is a case where the petitioner was gross negligent and thus, Additional District Judge dismissed the application.

3. I consider that this petition deserves to be dismissed outrightly. When the cases were transferred from the High Court to District Court, each and every litigant and his counsel was made aware that the cases were being transferred. On the dates fixed in the High Court, the court had specifically given notice that these cases stood transferred to the District Court and also gave dates when the parties were to appear before the District Court. It was obligatory on the plaintiff to appear before the District Judge and to find

out to which Additional District Judge the case was marked. The plaintiff did not appear before the District Judge nor bothered to find out to which Additional District Judge was his case marked. It is plaintiff's own case that he had left the premises the address of which was given by him in the plaint. It is his own case that he had not bothered to inform the court of his new address. It was obligatory on the petitioner to inform the court of his new address and to file amended memo of parties in the court giving new address and also to inform defendants about his new address. But as it is apparent, the plaintiff was not even bothered that he had filed a suit of declaration. His counsel was also not bothered that there was any such suit.

4. There are many frivolous suits which are filed in the court and which are not later on prosecuted, as sometimes, the purpose of the plaintiff is served by merely filing the suit. The trial court could have dismissed the suit when none appeared for the plaintiff, on the first date, however, the trial court served court notices not only on the plaintiff but on his advocate as well. Despite receipt of the court notice by the advocate, none appeared in the trial court. The trial court, thus, dismissed the suit. There is no explanation whatsoever as to why the plaintiff did not enquire about the suit from July 2003 when the case was transferred to District Judge till December, 2007 when plaintiff/petitioner thought it proper to enquire about the case.

5. I consider that such a gross negligent act was rightly not considered a reasonable ground for condoning the delay in moving application under Order IX Rule 9 CPC. The petition is hereby dismissed.

SHIV NARAYAN DHINGRA J.

MARCH 15, 2010
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