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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.323 of 2010 & C.M. Appl. Nos.4428-4429 of 2010

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12.03.2010

SWAMI GOVERDHAN RANGACHARIJI & ORS. Petitioners
Through: Mr. Mayank Yadav & Mr. Rishi
Lakhanpal, Advocates.

Versus

M/S. A.J. PRINTERS. Respondent
Through: Mr. S.K. Sharma & Mr. Mayan, Bansal,
Advocates.

Date of Order: 12th March, 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

SHIV NARAYAN DHINGRA, J. (ORAL)

1. By this petition, the petitioners have assailed an order dated 10th February, 2010 whereby an application of the petitioners under Order 41 Rule 27 CPC was dismissed by the appellate court.

2. The petitioners made an application before the appellate court to take on record certain additional documents in respect of resolution passed in the meeting of Board of Trustees on the ground that these documents could not be filed before trial court inadvertently and these documents were necessary for just decision of the case. The appellate court found that this contention of the petitioners was contrary to the testimony of PW-1, Sh. Raghu Nath Singh, recorded by the trial court wherein he had categorically

stated that there was no such resolution of the Board of Trustees. The appellate court also found that the grounds given in the application were not covered under Order 41 Rule 27 CPC and, therefore, dismissed the application.

3. Order 41 Rule 27 reads as under :-

“27. Production of additional evidence in Appellate Court – (1)
The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court.
But if –

- (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
- [(aa) the party seeking to produce additional evidence, established that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]
- (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

4. It is apparent that Order 41 CPC imposes a bar at taking additional evidence during appeal and this bar is lifted only under three circumstances as given in the Order itself. It is submitted by counsel for the petitioners that the case of the petitioners was covered under Order 41 Rule 27 (1) (b) CPC. This submission of the petitioners has no force. The appellate court in this case had not required any documents to be produced or any witness to be examined to enable it to pronounce judgment rather the appellate court

had considered that the documents sought to be produced by the petitioners at the belated stage could not be allowed to be taken on record.

5. I consider that there is no infirmity in the order of the appellate court. The grounds for additional evidence as sought by the petitioners in the application were not covered under Order 41 Rule 27 CPC. The application was rightly dismissed. The petition is hereby dismissed.

SHIV NARAYAN DHINGRA J.

MARCH 12, 2010
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