

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

Date of Reserve: 8th March, 2010

Date of Order: 12th March, 2010

CM(M) No. 308/2010

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12.03.2010

Mahavir Parshad Lamboria & Anr.

... Petitioners

Through: Mr. Maj (Dr.) J.C.Vashista, Advocate and
Ms. Sandhya Sharma, Advocate

Versus

Joginder Kaur & Ors.

... Respondents

Through: Mr. P.K.Rawal, Advocate and
Mr. Ajay Bahl, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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| 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. |

JUDGMENT

By this petition, the petitioner has assailed an order dated 16th February, 2010 whereby two applications of the petitioner under Section 151 CPC for recalling the order dated 14th December, 2009 and waiver of cost respectively were dismissed.

2. Brief facts relevant for the purpose of deciding this petition, are that on 14th December, 2009, the case was called several times by the Court since morning, at 2.10 p.m. since none appeared for defendant, defendant's (petitioners herein) evidence was closed. Cost imposed on previous hearing, to be paid on that day was also not paid. The matter was listed by the trial Court for 16th February, 2010 for final arguments. When the matter was taken up on 16th February, 2010, the counsel for the defendant appeared and told the court that he had made an application for recalling the previous order

dated 14th December, 2009. This application was dismissed by the trial court after noting the manner in which the defendant had impeded the trial and protracted the trial.

3. I have perused various order sheets placed on record by the respondents, who appeared in the Court on caveat. These proceedings show that only effort of the defendant from day one had been to impede the trial and to protract the trial. The defendant was proceeded ex parte on 29th March 2005 as defendant chose not to appear even upto 2.30 p.m. and the matter was listed for ex parte evidence. The defendant then made an application under Order 9 Rule 7 CPC for setting aside the ex parte order. This application was allowed subject to cost of Rs.500/- and the matter was listed for admission/denial on 30th September, 2005. On 30th September, 2005 defendant did not come forward for admission/denial and adjournment was sought by defendant for this purpose. Adjournment was granted despite opposition from the plaintiff subject to cost of Rs.250/- and the matter was listed on 10th November, 2005. On 10th November, 2005 proxy counsel for defendant appeared, no admission/denial was done and again an application for adjournment was made. The court observed that defendant will face consequences of non-appearance for admission/denial on the next date and listed the matter for arguments on an interim application and for framing of issues. The matter was taken up on 27th January, 2006 and again a request of defendant was received by the court for adjournment for arguments on interim application and for framing of issues. The court framed the issues and listed the matter for evidence. The matter was taken up for plaintiff's evidence on 23rd March, 2006. The plaintiff's witness was to be cross

examined on that day. Defendant again sought adjournment on the ground that counsel was not available, which was given subject to cost of Rs.500/- and the matter was posted for 11th May, 2006. On 11th May, 2006, an application for amendment of issues was made, again witness was not cross examined. The court dismissed the application and adjourned the case for cross examination of witness subject to cost of Rs.500/- and the matter was listed for 5th August, 2006. On 5th August, 2006 the plaintiff counsel was not available, so the matter was adjourned. Ultimately this witness of plaintiff was cross examined by defendant on 15th March, 2007 and plaintiff evidence was closed. The matter was listed for defendant's evidence on 8th May, 2007. Again a series of adjournments were sought by defendant for producing evidence on 8th May, 2007, 31st July, 2007, 9th October, 2007 and 1st November, 2007 - every time adjournment was granted subject to cost of Rs.500/- or Rs.1,000/-. The matter was then listed for 14th January, 2008 when DW-1 was partly cross examined and it was again fixed for 31st March, 2008. On that day DW-1 again did not appear. The court again adjourned the case for 1st April, 2008. On 1st April, 2008 again an application was made that DW-1 was not available and he was in Ahmadabad, again the matter was adjourned. On 5th May 2008, DW-1 was partly cross examined and the matter was listed for remaining cross examination on 8th July, 2008. On 8th July, 2008 DW-1 did not appear on the ground of illness, the matter was fixed for 15th September, 2008. On that day during cross examination, DW-1 stated that he was not feeling well and the cross examination was deferred and was listed on 25th October, 2008. On 25th October, 2008 again DW-1 did not appear on the ground of illness. The matter was listed on 15th December, 2008 when DW-1 was partly cross examined and the matter was listed on 20th

February, 2009. On 20th February, 2009 proxy counsel for defendant appeared, no DW appeared and the matter was listed for cross examination of defendants' witness on 3rd July, 2009. On 3rd July, 2009 again an application was made for adjournment which was opposed still the matter was adjourned. On 9th September, 2009 again an application for non appearance of DW-1 was made on the ground that he was having throat infection. The Court granted this adjournment subject to cost of Rs.7000/- and listed the case for 14th December, 2009. Again when neither defendant nor counsel appeared, the defendant's evidence was closed taking testimony of DW-1 out of record since he did not appear for cross examination. The learned trial Court in the order dated 16th February, 2010 noted few of the dates on which adjournments had been sought and dismissed the application for recalling order dated 14th December, 2009.

4. I consider that looking at the manner in which the defendant had deliberately been dragging the case and seeking adjournment after adjournment on flimsy, untenable grounds and the trial Court had been obliging defendant, it only shows that the trial was being impeded by the defendant at his whims and fancies and he wanted it to be extended to any length of time. I consider that the trial Courts while exercising discretion of giving adjournments must be careful and should not impose paltry costs of Rs.250/- or Rs.500/- which seem to be no costs in the present days. The costs imposed by the trial Courts must be realistic costs taking into account the time of the court wasted every time when the case is called and also taking into account the harm which is being caused to the entire judicial system by such kinds of adjournments and the sufferings of the plaintiff.

When the costs are realistic, keeping in view the present day value of money then only defendant seeking adjournment may be deterred from seeking such frequent adjournments. Where the costs are so paltry as is reflected in orders such as Rs.250, Rs.500/- or Rs.1,000/-, such costs encourage the party to seek adjournments because the cost of prolonging the case for few months comes out hardly Rs.200/- p.m. and anybody would happily pay such cost and keep the case prolonging. Thus, while adjournments are given on such grounds which the trial court may consider compelling, such adjournments must be given subject to realistic cost and not paltry and unrealistic cost.

5. In this case, the petitioner seems to have got encouraged for taking adjournment after adjournment by the paltry costs of Rs.500/- or Rs.250/- being imposed by the trial court. No justification whatsoever can be there on the part of the petitioner in not appearing on the date fixed. Excuse made by the counsel for the petitioner in the court that he had wrongly noted date of 24th instead of 14th is also a lame excuse. When the court announced date of 14th December, nobody could have noted it as 24th December, as there was no phonetic similarity between 24th and 14th in any language. I find that this petition is a gross misuse of the judicial process.

The petition is dismissed with costs of Rs.10000/- to be paid in Delhi High Court Legal Services Authority.

March 12, 2010
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SHIV NARAYAN DHINGRA, J.