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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.434 of 2009 & C.M. Appl. No.6754 of 2009

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22.03.2010

SHYAM SUNDER MALHOTRA

.....Petitioner

Through: Mr. A.K. Sharma, Advocate.

Versus

NATIONAL SMALL SCALE INDUSTRIES CORP. LTD.

.....Respondent

Through: Mr. A.K. Thakur, Advocate.

Date of Reserve: 12th March, 2010

Date of Order: 22nd 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

1. By this petition, the petitioner has assailed an order dated 16th April, 2009 whereby an application of the petitioner for waiving of cost was dismissed.

2. An application of the petitioner under Order IX Rule 7 CPC praying for setting aside ex-parte order dated 26th February, 2007 was allowed by the trial court, subject to cost of Rs.20,000/-. The petitioner did not pay cost and wanted to file written statement. The trial court imposed additional cost of Rs.5,000/- and the total cost became Rs.25,000/- and it observed that the payment of cost would be a condition precedent to filing of written statement. The petitioner argued before the trial court that the trial court had power to impose a maximum cost of Rs.3,000/-. The trial court considered this argument and observed that the limit of Rs.3,000/- was there only where costs were imposed under Section 35A CPC. However, there was no limit of Rs.3,000/- where cost

was imposed under Section 35B CPC. Since in this matter the cost was imposed under Section 35B CPC, the trial court dismissed the application for waiving of cost.

3. I find no reason to entertain a petition against imposition of cost, however, considering the fact that initially trial court had imposed cost of Rs.20,000/- and later on enhanced it to Rs.25,000/- due to non-deposit of cost and presenting written statement without payment of cost, it is directed that the cost of Rs.20,000/- as imposed by the trial court initially would meet the ends of justice and in case, the petitioner pays this cost within one week from today, he be permitted to file written statement.

4. With this direction, this petition is disposed of.

SHIV NARAYAN DHINGRA J.

MARCH 22, 2010
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