

* **HIGH COURT OF DELHI : NEW DELHI**

CM (M) No. 1010/2010 & CM No. 13901/2010 (stay)

% Judgment reserved on: 5th August, 2010

Judgment delivered on: 9th August, 2010

Sh. Lal Pratap Singh
S/o Shri Dev Narain Singh
R/o B-4/55, Nand Nagari,
Delhi

....Petitioner.

Through: Mr.Sree Narain Jha, Advocate.

Versus

1. Sh. Kanwar Lal
S/o Sri Ram Kumar
R/o B-5/385, Nand Nagari
Delhi

2. Smt. Devi W/o Sri Amar Singh
R/o B-5/385, Nand Nagari,
Delhi.

3. S.H.O.
P.S.Nand Nagri
Delhi

....Respondents

Through: None

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

This petition under Article 227 of the Constitution of India has been filed by the petitioner praying to set aside orders dated 30.11.2009 & 21.1.2010, passed by Commercial Civil Judge, Delhi.

2. Brief facts of this case are that, petitioner purchased the suit property from respondent No.1 on the basis of Registered General Power of Attorney and Agreement to Sell, after paying entire sale consideration to him. Since then, petitioner is in possession.

3. In 2009, some anti-social elements wanted to dispossess the petitioner from the premises, on the basis of false documents executed by respondent No.1, in favour of respondent No.2. Petitioner lodged an FIR. When respondents did not succeed in their illegal designs, they filed civil suit on the basis of forged documents.

4. It is contended by learned counsel for petitioner that order of the trial court closing evidence of petitioner is illegal since trial court did not permit the petitioner to file certain documents. These documents were not in power and possession of the petitioner, as original of the same are in custody of police. After receiving them on 30.10.2009, petitioner filed the same in the Court. As such application under Order 8 R. 1A of Code of

Civil Procedure (for short as 'Code') for filing these valid and genuine documents is very essential for decision of the suit, but trial court wrongly dismissed the same.

5. This application under Order 8 R. 1A of the Code was dismissed by the trial court, vide impugned order dated 30th November, 2009, relevant portion of it reads as under;

“So far the application U/o 8 Rule 1-A CPC is concerned, the defendant has simply submitted that the documents were not in power and possession of defendant no.2, but in the entire pleadings, the defendant has not explained in whose possession these documents were lying. Even nothing has been explained regarding the possession of the document in the written statement. At the stage of defence evidence, production of these documents will definitely bring the plaintiff in surprise that the defendant has placed these documents on record and the stand of the plaintiff would definitely effect. In the absence of any explanation, I found no ground to allow the application as the application has been moved just to delay the case and the same is hereby dismissed. Previous entire cost paid. Since no witness has been examined by defendant despite many opportunities, hence DE closed.”

6. Thereafter, petitioner filed application under Section 151 of the Code, seeking permission to lead evidence, which was dismissed, vide impugned order dated 21.1.2010. Relevant portion of this order read as under:-

“Perusal of the record shows that the case was fixed for DE on 27/07/09 after closing PE of the plaintiff for 22/08/09. On 22/08/09 no DW was present and case was adjourned with cost of Rs.500/- for 09/09/09. On 09/09/09 again no DW was present and further cost of Rs.1,000/- was imposed on the defendant for non examination of witness and last and final opportunity was granted to the defendant to lead DE for 07/10/09. On 07/10/09 no DW was examined and only affidavit of DW was filed, but no advance copy of affidavit was supplied to the plaintiff despite specific direction and again last and final opportunity was extended subject to the cost of Rs.500/- for 05/11/09. On 05/11/09 again no DW was present and further last and final opportunity was extended subject to further cost of Rs.1,000/- for 30/11/09. On 30/11/09 again no DW was examined by the defendant and an application U/o 8 rule 1 A was moved on behalf of the defendant to file certain documents on record which was dismissed by this court and DE was closed. As per order 17 CPC, only 3 adjournments have been granted to the parties, but in this defendant has already availed five consecutive opportunities at the stage of DE only. I found no ground to allow the application hence dismissed with cost of Rs.1,000/- as the same has been moved just to delay this case.”

7. Present petition has been filed under Article 227 of the Constitution of India. It is well settled that jurisdiction of this Court under this Article is limited.

8. In *Waryam Singh and another vs. Amarnath and another*, AIR 1954, SC 215, the court observed;

“This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in – ‘Dalmia Jain Airways Ltd. V. Sukumar Mukherjee’, AIR 1951 Cal 193 (SB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

9. In light of principles laid down in the above decision, it is to be seen as to whether present petition under Article 227 of the Constitution of India against impugned order is maintainable or not.

10. In the entire petition, petitioner has nowhere stated as to on which date issues were framed; what was the first date for petitioner's evidence; how many witnesses petitioner wanted to examine and whether any list of witnesses was filed. Present Petition is absolutely silent on these material facts.

11. In *Supreme Telecommunication Ltd. vs. RPG Transmission Ltd.* 2006 (89) DRJ 520, a Division Bench of this court observed;

“The rule of procedure are handmade of justice and should be implemented to achieve the ends of justice. The procedural law despite being regulatory in nature cannot come to the advantage or rescue of a litigant who abuses the process of the Court and keeps on taking adjournment after adjournments. A litigant who does not take steps as required by the Court despite orders from time to time cannot claim equity from the Court. Reference can be made to a recent judgment of this Court in the case of The Executive Engineer and Ors. v. M/s Machinery Parts Corporation being RFA No. 632/2000 decided on 27.4.06 where the Court held as under:

“The conduct of the defendants before the Court was of such a nature that the order passed by the learned Trial Court would not call for any interference. Furthermore, the court cannot keep on adjourning the case for evidence of the parties indefinitely and grant

adjournments at the mere asking of the parties, without any plausible cause or reason.”

12. Bare reading of both orders which are under challenge, clearly shows about the conduct of the petitioner. The only intention of petitioner is to delay the proceedings pending before the trial court. In spite of so many opportunities granted to him he has failed to produce any witness and is causing obstruction at every stage of the trial. Petitioner is prolonging the trial court proceedings by moving one application or the other.

13. It is well settled that frivolous litigation clogs the wheels of justice making it difficult for courts to provide easy and speedy justice to genuine litigants. It has also been observed in large number of cases that meritless litigation should be dealt with heavy hands. Any litigant who indulges in mindless litigation and unnecessarily waste the precious time of the Courts should not be spared. He must pay heavy costs for wasting time of the Court.

14. Thus, there is no illegality, infirmity or irrationality in the impugned orders passed by the trial court. Present petition is most bogus and frivolous one and is also meritless.

15. Since there is no merit in the present petition, the same is hereby dismissed with costs of Rs.10,000/- (Ten thousand only). Petitioner is

directed to deposit the costs, with Registrar General of this court by way of cross cheque, within four weeks, from today.

+ CM No. 13901/2010 (stay)

16. Dismissed.

17. List for compliance on 13th September, 2010.

18. Copy of this order be sent to the trial court.

9th August, 2010
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V.B.GUPTA, J.