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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: January 27, 2010
Date of Order: February 08, 2010

+ CM(M) 595/2008

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Rajinder Singh

Through: Mr. B.S. Chaudhary, Advocate

08.02.2010

...Petitioner

Versus

Devender Singh

Through: Mr. Amanullah, Advocate

...Respondent

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?

JUDGMENT

1. By way of present petition under Article 227 of the Constitution of India the petitioner has assailed order dated 25th March, 2008 passed by learned Additional District Judge, Delhi whereby an appeal filed by the petitioner herein against the order dated 4th January 2005 of Civil Judge was dismissed.

2. The facts relevant for the purpose of deciding the present petition are that when the case of the petitioner was listed before the learned Civil Judge on 11th April, 2004 none appeared on behalf of petitioner on the ground that there was a strike of advocates and nobody was permitted to enter the court premises. The Court also passed no adverse order and adjourned the case to 24th September 2004. On 24th September 2004, when again none appeared, the case was dismissed. In the application for restoration, it was submitted by the counsel for the petitioner that inadvertently the petitioner noted next date as 1st October 2004 instead of 24th September 2004 and the petitioner appeared alongwith his counsel on 1st October 2004 and they found that the suit was already dismissed on 24th September 2004. Thus there was bonafide reason for non appearance of the petitioner and his counsel on 24th September 2004. This application was

considered by the learned Civil Judge and he found that the plea of wrong noting of date taken by the petitioner was a false plea. The diary of counsel for the petitioner was inspected by the learned Civil Judge and he found that the diary had been fabricated. The previous date noted in the diary of the counsel for petitioner as 2nd June 2004 which was not the date fixed in the case. Since 2nd June 2004 was not the date fixed neither 1st October 2004 was the date fixed, it became obvious that these entries were fabricated in the diary in order to make out a case of wrong noting of date and he, therefore, dismissed the application.

3. In the appeal, no dispute was raised about the fabrication of the diary by the counsel and the only plea raised was that due to wrong noting of date, the right of the petitioner should not be allowed to go waste otherwise the petitioner will suffer gross injustice.

4. A person must approach the Court with clean hands. If the Courts starts ignoring false pleas raised in an application under Order IX Rule 4 or under Order IX Rule 13 CPC and start allowing applications on the ground of mercy and injustice, the entire sanctity of the judicial orders shall go. The Courts have to curb tendencies of raising false pleas in the Courts and it must be made clear to the litigants that they must come to the Court with clean hands. In the present case, the plea was taken that the proxy counsel noted wrong date, despite that neither the affidavit of proxy counsel was filed nor any document was filed showing that the proxy counsel had noted wrong date. Even the name of proxy counsel was not disclosed. If the advocate or litigant was not able to enter the court premises on 11th April, 2004, then it was obligatory on the part of the petitioner and his counsel to inspect the file and note down the order of 11th April, 2004. In this case in order to take a plea of noting wrong date, the diary of counsel of the petitioner was fabricated to be produced before the Court to show the noting of wrong date. The learned trial court and the appellate court, after considering all facts found no force in the plea raised by petitioner.

5. I find that the learned Civil Judge and the First Appellate Court rightly did not allow the application under Order IX Rule 4 CPC made on the basis of forged diary of advocate which was

done for the purpose of seeking restoration of the suit. The present petition is without merits and is hereby dismissed with no orders as to costs.

February 08, 2010
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SHIV NARAYAN DHINGRA J.