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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: February 17, 2010

Date of Order: March 02, 2010

+ CM(M) 650/2008

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Devender Kumar

Through: Mr. J.S. Chauhan, Advocate

02.03.2010

...Petitioner

Versus

Bishno Devi & Ors.

Through: Mr. Pankaj Batra, Advocate

...Respondents

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 an order dated 20th March, 2008 passed by learned Civil Judge (Executing Court) whereby the learned Civil Judge directed the petitioner to refund an amount of Rs.1 lac and the post-dated cheque received in execution of the decree to the objector.

2. Brief facts relevant for the purpose of deciding this petition are that a decree under Order XXXVII CPC was passed against one Yogesh Kumar (son of the objector Smt. Bishno Devi and brother of Rajesh Kumar Maurya). The decree holder sought execution of decree against Yogesh Kumar at the residential address where Smt. Bishno Devi and Shri Rajesh Kumar (objectors) used to live. The Bailiff of the Court along with police help had gone to the house and as per Bailiff report a sum of Rs.50,000/- in cash was paid to decree holder along with post-dated cheque of rest of the decretal amount by the objectors. The objectors later on filed objections that the decree was against Shri Yogesh Kumar and it was wrongly executed against the objectors. Shri Yogesh Kumar was missing from the house even at the time of filing of the suit. The decree was wrongly executed against the objectors. An application was also made for return of not only the

cash and cheques received through Bailiff but another amount of Rs.50,000/- on the ground that decree holder again came back with musclemen and took another sum of Rs.50,000/- and executed a receipt.

3. The petitioner herein filed response to the objections and took the stand that in presence of Bailiff of the court, he was paid an amount of Rs.50,000/- and post-dated cheque and he had not received any other amount and the allegations that he had taken musclemen in the evening were false. About executing receipt, he stated that the receipt in question was issued by him in respect to the amount he received through Bailiff since the objectors wanted a receipt from him, i.e., decree holder.

4. The executing court while upholding the objections that decree was not executable against objectors, directed the petitioner to refund an amount of Rs.1 lac and post-dated cheque. The present petition was admitted only on the point whether the order of directing refund of Rs.1 lac instead of Rs.50,000/- was within the jurisdiction of the executing court or not.

5. It is an undisputed fact that an amount of Rs.50,000/- and post-dated cheque were received by decree holder through Bailiff. The allegations of paying another amount of Rs.50,000/- were made by the objectors for which there was no evidence before the executing court. Without going into the truthfulness of the allegations, the executing court directed the petitioner to refund the amount of Rs.50,000/- just on the basis of allegations. I consider that unless and until it was proved by the objectors through cogent evidence that the decree holder had received another sum of Rs.50,000/- in the evening with the help of musclemen, the executing court could not have ordered for refund of the amount. Even otherwise, the executing court was only concerned with the execution of decree carried out through Bailiff and not concerned with the allegations that the decree holder had come with some musclemen and obtained Rs.50,000/- more. If these allegations had some substance, this would give rise to a separate cause of action for the objectors since the objectors had already paid the decretal amount in presence of Bailiff in discharge of the decree. There was no reason for the objectors

to again pay the amount and there was no reason for the executing court to go into this aspect of the objections. The objections could be entertained only in respect of the execution done through the Court. An unauthorized execution of decree would give rise to a separate cause of action and is not within the domain of the executing court. The executing court therefore exceeded its jurisdiction in directing refund of additional amount of Rs.50,000/- to the objectors.

6. In the result, the petition is allowed to the extent that the petitioner shall refund only Rs.50,000/- and post-dated cheque as received through bailiff and not an amount of Rs.1 lac, as directed by the executing court.

7. The petition stands disposed of in above terms.

March 02, 2010
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SHIV NARAYAN DHINGRA J.