

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

Date of Reserve: 21st January, 2010

Date of Order: January 29, 2010

CM(M) No. 602/2009

%

29.01.2010

M/s Niharika Elektroniks P. Ltd. & Ors.

... Petitioners

Through: Mr. Akhileshwar Pandey, Advocate

Versus

United Bank of India & Ors.

... Respondents

Through: Mr. Sanjiv Kalra, Advocate for R-1

Mr. Manoj Kumar, Advocate for

Mr. V.K.Tandon, Advocate for R-2

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

By this petition under Article 227 of the Constitution of India the petitioners have assailed order dated 11.6.2008 and 21.4.2009 passed by the Debt Recovery Tribunal in IA No. 815/2008 in OA No. 1089/95 pending before the Tribunal. Vide order dated 21.4.2009 the Tribunal dismissed a review petition against order dated 11.6.2008 observing that there was no ground for review. The petitioner thereafter preferred an appeal before the Appellate Tribunal on 15.5.2009 against the order dated 21.4.2009 giving all sequences of dates and events and this appeal was withdrawn by the petitioner on 1.6.2009. The petitioner thereafter preferred the present petition before this Court under Article 227. On the very first date of hearing, this Court noticed about appeal having been withdrawn and told the petitioner to place a copy of order in Appeal on the record. The Counsel admitted that the order dated 1.6.2009 did not show that the appeal was withdrawn after seeking liberty of the Appellate Tribunal to resort to other remedy. The petitioner told the Court that he would move an application before Debt Recovery Appellate Tribunal seeking a clarification of the order that liberty was granted to him. This clarification application was moved by the petitioner before the Tribunal and same was dismissed by the Tribunal on 17.11.2009 observing that at the time of withdrawal, no request was made for liberty to approach another forum and this was

an afterthought of the appellant. The Tribunal also observed that the appellant (petitioner herein) in his application seeking clarification of the order from the Tribunal had himself mentioned that the appeal was withdrawn on realizing that it was not maintainable and the application to withdraw the appeal was allowed. However, no liberty was granted by the Tribunal to file appropriate petition before appropriate Court/High Court. The petitioner did not state before the Tribunal that it had sought leave to move other forum and such leave was granted but was not mentioned in the order.

2. Be that as it may. The order dated 21.4.2009 is a one line order passed by the Tribunal that there was no sufficient ground to review order dated 11.6.2008. This order was perfectly within the jurisdiction of the Tribunal. The Tribunal can dismiss or allow a review petition. Order dated 11.6.2008 was an appealable order. It was an option of the petitioner to file an appeal against the order dated 11.6.2008 or not to file appeal and seek only review. Once the petitioner decided not to file an appeal against an order which was an appealable order and only chose to file review, he cannot later on say that since he had not filed appeal, he would have right to file a petition under Article 227 of the Constitution of India. It is not the case of the petitioner that there was any procedural illegality in the order dated 11.6.2008 or appeal was not maintainable against order dated 11.6.2008. When the remedy of appeal is available against an order, this Court cannot exercise its jurisdiction under Article 227 because the petitioner did not choose to file an appeal. Jurisdiction under Article 227 has to be exercised only in those cases where there is no remedy of appeal or revision available to the party and the Court below had acted in gross violation of the procedural rights or contrary to the established law, which requires interference of the High Court in its supervisory jurisdiction. It is not a case here.

I find no reason to exercise power under Article 227 in this matter. The petition is hereby dismissed.

January 29, 2010
vn

SHIV NARAYAN DHINGRA, J.