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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.1180 of 2007 & C.M. Appl. No.11746 of 2007

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22.03.2010

LATE SH. MUSADDI KHAN THRU. LRS. Petitioner
Through: Mr. T.P.S. Singh & Mr. M.M. Alam,
Advocates.

Versus

UNION OF INDIA & ANR. Respondents
Through: Mr. B.V. Niren, CGSC for R-1/UOI.
Mr. Ajay Verma, Advocate for DDA.

Date of Reserve: 16th 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 22nd June, 2007 of the learned Additional District Judge whereby he upheld the order of learned Civil Judge holding that the application under Order 39 Rules 1 & 2 CPC made by the petitioner already stood decided by him and he was not required to re-decide the same and the interim injunction refused earlier was operative.

2. The brief facts relevant for the purpose of deciding this petition are that the petitioner's father filed a suit for permanent injunction in the year 1984 against the respondents. In the suit, petitioner's father filed an application under Order 39 Rules 1 & 2 CPC. This application was dismissed by learned Civil Judge by a speaking order passed on merits after hearing both the parties. It appears that father of the petitioner died

during initial pendency of the suit and an application to bring LRs on record was not moved in time. However, later on an application to bring LRs was filed which was dismissed by the trial court holding that the suit had already abated. The two orders, one under Order 39 Rules 1 & 2 CPC and the other on application under Order 22 Rule 3 CPC passed by the trial court on 22nd August, 1987 were assailed by the petitioner in an appeal before the learned Additional District Judge being MCA Nos.284-285 of 1987. The learned Additional District Judge after considering the arguments of both the sides observed that the suit filed by the petitioner's father was rightly held abated and there was no ground to reverse the order passed by the learned Civil Judge on application under Order 22 Rule 3 CPC. The learned Additional District Judge, however, did not decide the appeal against the order passed by the Civil Judge on application under Order 39 Rules 1 & 2 CPC observing that it was unnecessary since the suit itself has become abated. Against this order dated 15th December, 1989 of learned Additional District Judge, a revision petition was preferred before the High Court and the High Court vide order dated 27th March, 1997 in para 8 observed as under :-

“Having heard the learned counsel for the parties, I am of the opinion that the revision deserves to be allowed and the impugned orders of the two courts below holding the suit as having abated deserve to be set aside.”

3. After making above observation regarding abatement, learned Judge allowed the petition in following terms :-

“13. For the foregoing reasons the revision is allowed. The impugned orders of the two courts below are set aside. The application dated 11.4.85 filed by the petitioners herein is allowed and substitution in the terms sought for is granted.”

4. It is clear from the High Court's order and from the order of learned Additional District Judge that no observations were made either by learned Additional District Judge

or by the High Court in respect of the order passed by learned Civil Judge on application under Order 39 Rules 1 & 2 CPC and it was only the issue of abetment which was agitated before the High Court and was answered by the High Court. Thus, the order passed by learned Civil Judge on application under Order 39 Rules 1 & 2 CPC rejecting the application remained untouched.

5. Under these circumstances, learned Civil Judge was right in holding vide his order dated 1st June, 2007 that since he has already decided application under Order 39 Rules 1 & 2 CPC he cannot again decide application under Order 39 Rules 1 & 2 CPC. Learned Additional District Judge before whom an appeal was filed against this order also rightly came to the conclusion that the learned Civil Judge could not have again decided the application under Order 39 Rules 1 & 2 CPC. However, the learned Additional District Judge reconsidered the matter of grant of injunction on merits as well and held that there was no ground for changing or reversing earlier order of rejecting the application since the petitioner was yet to prove *prima facie* case and there were triable issues involved regarding petitioner's right over the property in question. It was also observed that the property in question had been acquired for Delhi Metro Rail Corporation Limited under Section 56 of Delhi Metro Railway (Operation and Maintenance) Act, 2002, which bars jurisdiction of the Civil Court.

6. I find that there were no merits in this petition. The petition is hereby dismissed.

SHIV NARAYAN DHINGRA J.

MARCH 22, 2010
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