

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

CM (M) No. 1003/2010 & CM No. 13727/2010 (stay)

% Judgment reserved on: 4th August, 2010

Judgment delivered on: 6th August, 2010

1. Smt. Leela Devi
 2. Shri Manoj Kumar
 3. Sh.Pankaj Kumar
 4. Sh. Nitin Kumar
 5. Ms. Pooja
- Petitioners.

All residents of 3345, First Floor
Kucha Kashgiri Bazar Sita Ram,
Delhi.

Through: Mr. Manoj Kumar, Advocate.

Versus

Smt. Sarla Garg
W/o of Sh. Satish Garg
R/o D-778, Saraswati Vihar
Pitampura, Delhi

....Respondent

Through: None

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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.

1. Present petition under Article 227 of the Constitution of India has been filed against order dated 13.7.2010 of Senior Civil Judge, (West) Delhi, vide which application of petitioners under Section 151 of Code of Civil Procedure (for short as 'Code') for recalling of order dated 12.5.2010, was dismissed.

2. At the time of hearing, it was observed that petitioners have not placed on record complete list of dates of the trial court proceedings. Petitioners were given opportunity to file the same, however, their counsel stated that he does not want to file the same and shall argue the matter.

3. It is argued by the learned counsel that on 23.4.2010 three witnesses of petitioners were present. However, the counsel was not available and due to this, these witnesses could not mark their presence.

4. Other plea is that, on 12.5.2010 petitioners were under bona fide belief that Court will first decide the issue of deposit of costs and thereafter witnesses would be allowed to be examined. Due to this reason, witnesses were not called by the petitioners. On that date, petitioners moved an

application for permission to deposit the cost in instalment. Absence of witnesses on 12.5.2010 was neither intentional nor deliberate and as such order dated 12.5.2010 be recalled.

5. In entire petition it is nowhere stated as to on which date issues were framed and what was the first date for evidence of the petitioners. Nor it is stated as to how many witnesses petitioners wants to examine and whether any list of witnesses has been filed.

6. On 12.5.2010, petitioners filed an application under Section 151 of the Code seeking permission to deposit cost of Rs. 25,000/- imposed upon them by this Court, vide judgment dated 11.2.2010 in CM (M) No. 206/2010. Petitioners also filed an application for modification/reduction of cost before this Court which was dismissed on 10.5.2010.

7. Trial court in its order dated 12.5.2010 observed:-

“In the entire application, the defendants have not made a mention about either the aforesaid petition or the order passed by the Hon’ble High Court of Delhi thereupon. Therefore, the conduct of the aforesaid defendants is not bona fide.”

8. This order further reads:-

“On the last date of hearing, it was clarified to the defendants that today would be the last and final opportunity for leading defence evidence in the matter.

Today again, no DW is present. Several opportunities have already been granted to the defendants to lead evidence in the matter. Therefore, the right of the defendants to lead further evidence in the matter stands closed.

At this stage, learned counsel for the aforesaid defendants has placed on record three affidavits of witnesses namely Shri Rajinder, Shri Sunder Lal and Shri Sri Ram. These witnesses are not present in court today, therefore, these affidavits cannot be considered now.”

8. After dismissal of petitioners application under Section 151 of the Code, Petitioners filed an application for reconsideration/recalling of order dated 12.5.2010. That application was dismissed by the trial court vide order dated 13.7.2010 which reads as under:—

“Today the matter is listed for final arguments. An application u/S 151 CPC has been filed on behalf of aforesaid defendants for permission to lead further DE in the matter. Enough opportunities had already been granted to the defendants to conclude evidence. No tangible ground to grant another opportunity has been made out in the application. In the interest of justice, had directed the defendants to bring their witnesses today. It is already 2.15 P.M. The learned counsel for the aforesaid defendants submits that his witnesses are not available. With this view of the matter, the application stands dismissed.”

9. 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.

10. 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.”

11. 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.

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

“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.”

13. A bare reading of both orders would clearly shows about the conduct of the petitioners, who have concealed material facts from this court about dismissal of earlier CM (M) by this very court with costs. Petitioners only motive and intention is to delay the proceedings before trial court. They have been flouting the orders of the trial court as well as of this Court, with impunity. Their only intention is not to lead any evidence.

14. 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.

15. 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.

16. Since there is no merit in the present petition, the same is hereby

dismissed with costs of Rs.25,000/- (Twenty five thousand only).

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

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18. Dismissed.

19. List for compliance on 10th September, 2010.

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

6th August, 2010
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V.B.GUPTA, J.