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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: February 09, 2010

Date of Order: March 22, 2010

+ Cont(Cas) 468/2008

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Sarita Perwal & Anr.

Through: Mr. R.K. Saini, Advocate

22.03.2010

...Petitioners

Versus

Pankaj Prakash

Through: Mr. Arun Kathpalia and Mr. Sachin Puri, Advocates

...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 this petition under Section 10 and 11 of the Contempt of Court Act, the petitioner sought action against respondent for willful defiance of the order dated 20th October 2007 passed by Shri V.K. Yadav, learned ADJ.

2. Brief facts relevant for the purpose of deciding this petition are that during pendency of petition for possession and mesne profits of the premises, the petitioner made an application under Order 39 Rule 10 CPC. This application was allowed and the learned ADJ directed respondent to deposit Rs.4,36,068/- towards arrears of rent within a month from the date of passing of order and to continue to deposit by 10th of every month the damages @ Rs.2,000/- per day, in terms of the agreement.

3. It is not in dispute that after passing of this order, the suit filed by

plaintiff was also decreed. It is also not in dispute that an RFA was preferred before this Court being RFA 492 of 2009. It appears that possession of the tenanted premises was in the meantime surrendered and the RFA No.492 of 2009 was admitted only on the issue of mesne profits. Thereafter, the appellate court on appeal till next date of hearing stayed the operation of the impugned judgment.

4. It is settled law that if an interim order is passed and after passing of an interim order, a final judgment is passed, the interim order merges into the final order and if an appeal is preferred, the order of the trial court merges into the order of the appellate court. In the present case, the order passed by learned ADJ under order 39 Rule 10 CPC merged into the final judgment and decree and the decree became executable. However, since respondent preferred an appeal against the decree and the appeal was admitted on the issue of mesne profits, the issue of mesne profits is pending now before the appellate court. Under these circumstances, I consider that the proceedings for contempt against respondent would not lie. Even otherwise, it is settled law that the proceedings under Contempt of Courts Act cannot be used as an alternative for execution of the decree. I find no force in this petition. The contempt petition is hereby dismissed.

March 22, 2010
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SHIV NARAYAN DHINGRA J.