

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

C.M. (Main) No.1227 of 2007 & C.M. Appl. No.12279 of 2007

%

24.02.2010

SANJEEV MATHUR

.....Petitioner

Through: Mr. D.R. Bhatia, Advocate.

Versus

PRABHA AGGARWAL

.....Respondent

Through: Mr. Satish Sahai, Advocate.

Date of Reserve: 17th February, 2010

Date of Order: February 24, 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 23rd July, 2007 passed by learned Additional District Judge. The order reads as under :-

“No ground for adjournment as witnesses are not available since last four dates. Accordingly PE stands closed. Evidence of plaintiff taken out of record.

Defendant do not want to lead any evidence in the absence of P.E. according DE also stands closed.

Put up for final arguments on 12.09.2007.”

2. The contention of the petitioner is that the petitioner filed affidavit of his witnesses in February, 2004 and thereafter the matter was fixed for cross-examination of plaintiff's witnesses on 25th May, 2004. The matter was taken up on number of occasions but cross-examination was not completed. In the meantime, the Presiding Officer changed and a new Presiding Officer Sh. Daya Prakash, Additional District Judge took over the court. It is alleged that one of the hearings when the case was being heard, the learned Additional District Judge was found telling counsel for the respondent that he would make sure that the respondent wins the case as he knew the

respondent very well. This was told by the Presiding Officer in presence of the petitioner. It is stated that the petitioner got apprehensive and filed a transfer application under Section 24 CPC before the District Judge on 29th January, 2007 containing these allegations. This application was fixed on 9th April, 2007 and then for 3rd July, 2007 and the again application was adjourned to 7th September, 2007. There was no stay of proceedings thus, the proceedings before the learned Additional District Judge continued. On 26th February, 2007, the matter was adjourned by the court for 30th April, 2007. On 30th April, 2007, the matter was again adjourned to 23rd July, 2007 on which date, aforesaid order was passed.

3. It is submitted by counsel for the petitioner that since the learned Presiding Officer Shri Daya Prakash stood transferred from that court now, his application under Section 24 was dismissed having become infructuous but since his evidence itself was closed, he be given liberty to lead evidence.

4. The respondent has filed order sheets of the court from 25th May, 2006 onwards which show that the opportunity of the respondent to cross-examine the plaintiff's witness was closed by learned Additional District Judge on 17th April, 2006. Immediately thereafter when the matter was listed on 5th May, 2006, the defendant filed an application under Section 151 CPC for reviewing the order dated 17th April, 2006. Notice of the application was given to the petitioner and the matter was listed for reply and disposal of this application on 27th July, 2006. Reply was filed on 27th July, 2006 by the petitioner to this application, however, counsel for the petitioner was not ready for arguments so, the matter was adjourned to 25th August, 2006. On 25th August, 2006 after hearing arguments of the parties, the application was allowed and one opportunity was given to the defendant for cross-examination of PW-1 and the matter was listed for 27th October, 2006. On 27th October, 2006, the plaintiff's witness appeared by 12:50 p.m. The defendant seems to have taken the stand that he would cross-examine two or more witnesses together. Learned Additional District Judge passed an order for appearance of other witnesses on 7th December, 2006. On 7th December, 2006, the witnesses were not produced by the plaintiff and

time was sought and the matter was posted on 26th February, 2007.

5. The allegation of the petitioner is that the judge told counsel for the defendant in his presence on 27th October, 2006 that he was known to the defendant and he would decide the case in favour of the defendant. If judge had made these observations on 27th October, 2006, the petitioner should have filed a complaint against the judge immediately thereafter either to the District Judge or to the High Court and would have simultaneously moved an application for transfer forthwith. No such step was taken by the petitioner. The order sheet of 27th October, 2006 shows presence of advocates of the plaintiff as well as of the defendant. There is no reason to believe that the judge could have, in open court, in presence of all the litigants made this observation that he was known to defendant and he would pass a judgment in favour of the defendant. These allegations seem to be palpably false on the face of it. If a judge is known to a party and he wants to decide the case in favour of a party, he would not make a declaration of the same openly so that the case is transferred from him. Moreover, no such relationship has been pointed out by the petitioner between the Presiding Officer and the defendant. It is incumbent upon every judge that if he knows a party, he rescues himself from the case. There is no reason to believe that the judge did not follow the procedure of rescuing himself had he known the party.

6. Making of a transfer application is used as another tool to prolong the case. You make any baseless allegation against the judge and seek transfer. This tendency to prolong the case in this manner must be curbed. Unsubstantiated and unfounded allegations made against the judge cannot be entertained by any court. In the present case in fact the proceedings of the case would show that the judge did not ever insist upon that the evidence should be on day to day basis nor the case was given priority over other cases. It is the plaintiff, who did not produce evidence after 25th August, 2006. Only on 27th October, 2006 one witness appeared by 12:50 p.m. and thereafter, no evidence was produced by the plaintiff. A judge is not supposed to keep the case adjourning merely because a party adopted the tactics of delaying the case by filing application under Section 24 CPC. This has been seen that once a plaintiff obtains an interim injunction, his effort is to drag the case as long as possible since he is enjoying interim injunction. There is no

reason stated in the plaint as to why the plaintiff did not produce evidence witness to be examined by defendant's counsel.

7. Even otherwise had there been any truth in the averment made by the petitioner, the petitioner would have approached the District Judge on 27th October, 2006 itself or at the most on next day. The very fact that the petitioner moved application in January, 2007 shows that this was an afterthought and the petitioner somehow wanted to drag the case.

8. I, therefore, consider that the present petition filed by the petitioner that the petitioner was not bound to examine witness during pendency of transfer application has to be dismissed and is hereby dismissed.

SHIV NARAYAN DHINGRA J.

FEBRUARY 24, 2010
'AA'