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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.757 of 2009 & C.M. Appl. No.10740 of 2009

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08.01.2010

SHYAM SUNDER BHATTAR

.....Petitioner

Through: Mr. Baankey Bihari Sharma, Advocate.

Versus

AJIT AGGARWAL

.....Respondent

Through: Mr. Arun Sukhija, Advocate.

Date of Order: 8th January, 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 under Article 227 of the Constitution of India, the petitioner has assailed order dated 16th March, 2009 passed by learned Additional District Judge. The order reads as under :-

“Arguments heard. The application is allowed, subject to a cost of Rs.500/- to be paid to the plaintiff on next date. However, it is made clear that exhibition of the documents would be subject to the objections raised by the plaintiff.”

2. A perusal of the record shows that the defendant made an application under Section 151 CPC seeking permission to file documents at the stage of evidence stating that these documents were filed along with affidavit of the defendant's witnesses and the court advised defendant to file necessary application so, this application was filed. The reason for not filing the documents earlier given in the application is that the file/documents relating to the case were lost during renovation of the house of the

defendant and recently on intensive search; the defendant was able to locate them.

3. Order VIII of CPC provides the stage when documents are required to be filed by the defendant. Order VIII Rule 1A CPC provides that when defendant relies upon certain documents, he has to file these documents along with written statement and deliver a copy of the same to the other party. If any documents are not in possession and power of the defendant, he has to state so and has also to state in whose power and possession these documents were. Thus, if the documents were not traceable, the defendant was supposed to mention about the documents and state that these documents were not traceable and he shall produce them as and when they are traced. Order VIII Rule 1A (3) CPC provides that no document can be received in evidence without leave of the court and Rule 1A (4) CPC provides that this Rule would not apply to documents produced for cross-examination of the plaintiff's witnesses.

4. Order XIII CPC further deals with production and return of documents and it is very categorically stated under Order XIII CPC that the parties or their pleader shall produce all documents before settlement of issues and these documents shall be received if they are accompanied with an accurate list of documents. Thus, it is clear that all documents are required to be filed by a party before framing of issues and if any document is sought to be filed after framing of issues, the party is supposed to explain the reasons for not filing the documents earlier and the court has to consider those reasons and give a finding if the grounds taken for not filing the documents were genuine or not.

5. Section 151 CPC is not an omnibus section which can be applied by the court or by the parties for those matters where specific provisions under CPC exist. If specific provisions under CPC exist about certain matter, the court must deal with the matter in

accordance with the provisions. The provisions cannot be overridden by Section 151 CPC.

6. The trial court in this case without discussing the relevancy of documents and why their filing was necessary for decision of the case and whether there was a reasonable ground for allowing the documents to be filed or not at the stage of evidence, allowed the application with a non-reasoned order. Thus, the trial court failed to exercise its jurisdiction as available under the appropriate provisions of CPC and exercised jurisdiction under Section 151 CPC where it was not available. The order dated 16th March, 2009 is hereby set aside.

7. The petition is allowed.

SHIV NARAYAN DHINGRA J.

JANUARY 08, 2010
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