

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

C.M. (Main) No.964 of 2009

%

15.03.2010

M/S. BLUE HEAVENS GARMENTS Petitioner
Through: Mr. D.P. Bhatia, Advocate.

versus

M/S. KIDS COLLECTION Respondent
Through: Mr. Madan Lal Sharma & Mr. Varun Nischal,
Advocates.

Date of Reserve: 5th March, 2010

Date of Order: March 15, 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 25th July, 2009 whereby review application of the petitioner was dismissed by the trial court. The petitioner has sought review/recall of an order dated 21st February, 2009 whereby the trial court had closed cross-examination of the witness of the plaintiff since the defendant counsel did not turn up for cross-examination of the witness whose cross-examination was being postponed time and again because of petitioner.

2. This review application was made after two months of passing of the order dated 21st February, 2009. The trial court observed that the period of limitation for review was 30 days and this application was filed after more than 60 days. There was no application seeking condonation of delay nor any reasons were given for not filing application within

period of limitation. The trial court, therefore rightly observed that the review application was liable to be dismissed only on this ground. The trial court also went into the merits and found that incorrect facts were stated in the review application.

3. During arguments before this Court, counsel for the petitioner did not dispute these observations made by the trial court about the incorrect facts having been stated in the review application. The correct facts show that PW-1 was partly cross-examined on 30th August, 2008. His further cross-examination was deferred for 25th October, 2008 when none was present on behalf of the defendant. However, the plaintiff also sought adjournment on that day since his counsel was out of station. The case was adjourned for further cross-examination of this witness on 6th December, 2008. Even on 6th December, 2008, counsel for defendant did not appear for cross-examination of this witness upto 12:05 p.m. Counsel for the plaintiff who was waiting for the defendant counsel, requested the court that he had to go back to Tis Hazari Courts and the case may be taken on some other day. The case was then again taken up on 21st February, 2009. None appeared for the defendant on first two calls. Proxy counsel appeared on behalf of the defendant who did not cross-examination the witness. The trial court therefore, closed the cross-examination.

4. The ground taken before the trial court for reviewing of the order was that the defendant was an aged person he had health problems and, therefore, he could not appear and could not go to the chamber of the advocate for signing reviewing application in time. The trial court found that there was no medical certificate attached to the application about health of the defendant or about his confinement.

5. I consider that principles of natural justice do not require that a case should be adjourned time and again because defendant's counsel adopt tactics of not appearing in

the case on first and second call and then sends a proxy counsel so as to get the case postponed every time. Whenever a case is fixed for examination of witnesses, witnesses come to the court at 10 a.m. It is obligatory on counsel for the parties to make themselves available for examination/cross-examination of witnesses. The courts do not exist as an employment source for legal professionals alone. The existence of courts is justified only for dispute resolution between the parties in a reasonable time. Any effort by advocate of a party or by a party to drag the case and to harass the witnesses by not cross-examining and seeking adjournments again and again must be deprecated and curbed. It is not the prerogative of the advocate that he will cross-examine the witness when he has time. Counsel is supposed to manage his diary in such a manner that when there is a case for examination/cross-examination of the witnesses, he is there in the court for cross-examination, if not in the morning at 10 a.m. then around 11 a.m. when the miscellaneous matters are over. The court cannot keep on postponing evidence cases. If evidence cases are passed over time and again, ultimate result is that evidence cannot be recorded because of paucity of working time of that day. This result into harassment of the witnesses as they had to go back unexamined. The court management also gets grossly disturbed. Thus, in all evidence cases, counsel for the parties must be there for examination of witnesses latest by 11 a.m. after miscellaneous matters are over. It cannot be expected of the trial court to get the witnesses waiting from 10 a.m. till 2-2:30 p.m. and then start examination of witnesses.

6. I find no merits in the petition. The petition is hereby dismissed.

SHIV NARAYAN DHINGRA J.

MARCH 15, 2010
‘AA’