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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.1576 of 2007 & C.M. Appl. No.16544 of 2007

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02.03.2010

GEETA BHUTANI

.....Petitioner

Through: Mr. S.K. Gupta, Advocate.

Versus

M/S. SAT NARAIN GUPTA & SONS & ORS.

.....Respondents

Through: Mr. Ayush Gupta, Advocate for R-1.

Date of Order: 2nd March, 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

SHIV NARAYAN DHINGRA, J. (ORAL)

1. This petition has been filed by the petitioner assailing an order dated 2nd November, 2007 whereby application of the petitioner under Order VI Rule 17 CPC was dismissed with cost. The respondent/plaintiff had filed a suit for recovery of price of goods supplied to the defendants. Defendant No.1 is the partnership firm and defendant Nos.2 and 3 are the partners. Defendant Nos.1 and 3 filed a joint written statement while defendant No.2 filed a separate written statement. The plea taken by the defendants was that the goods supplied by the plaintiff were defective and the agreed discounts were not provided and computation done by the plaintiff was incorrect, therefore, plaintiff was not liable to recover the price of the goods. Defendant No.2 by making application under Order VI Rule 17 CPC sought to amend the written statement so as to state that liability of defendant No.1, that is, partnership firm stood transferred to M/s. Geeta Enterprises, a

proprietorship concern of defendant No.3 and suit, therefore, as against defendant No.2 was liable to be dismissed. This application for amendment was made by the defendant not only after framing of issues but after evidence of the plaintiff had been partly recorded. The trial court noted the conduct of defendant No.2 in following words :-

“6. Perusal of the record would reflect that initially upon service of summons in suit, a counsel appeared and undertook to file vakalatnama as well as written statement on behalf of all the defendants including defendant No.2. But thereafter, on the next date, the said counsel refused to appear on behalf of defendant No.2, due to which the defendant No.2 was proceeded ex-parte. Thereafter, an application for setting aside ex-parte against defendant No.2 was filed but withdrawn. Thereafter, another application for setting aside ex-parte against defendant No.2 was filed which was allowed uncontested. After filing of written statement by defendant No.2 followed by replication, in presence of ld. counsel for defendant No.2 issues were framed and thereafter on the next date in presence of a proxy counsel for defendant No.2 PW-1 was chief examined. Cross examination of PW-1 was adjourned at request of proxy counsel for defendant No.2 on the grounds of non-availability of the main counsel, though defendant No.2 was burdened with cost. On the next date, in the first call none appeared for defendant No.2, PW-1 was cross examined on behalf of defendant Nos.1 & 3 and the case was kept pending. In the next call, ld. counsel for defendant No.2 appeared and sought an adjournment on the grounds of pendency of the application under consideration. Even today, ld. counsel for defendant No.2 could appear only in 4th call though he had appeared once at the time of rising before lunch. In view of the above said record, contention of ld. counsel for plaintiff that the defendant No.2 is simply delaying the suit cannot be brushed aside. Hon’ble Delhi High Court held in the case of VIMLA DEVI vs. SURENDER KUMAR, 67 (1997) DLT 728 that where the application is not in good faith or has been brought with ulterior motive to prolong the litigation, amendment would not be allowed.”

2. The trial court also found that the alleged transfer of liability to M/s. Geeta Enterprises was within the knowledge of defendant No.2 even on the date of filing written statement and this was not a subsequent event and there was no explanation in the application as to why this fact was not disclosed in the written statement initially. The

trial court found that the amendment was being sought after the commencement of trial with no justification but just to delay the proceedings.

3. I am in perfect agreement with the trial court. The conduct of the petitioner from the very beginning had been to delay the proceedings. It is not the case of the petitioner that the petitioner was not aware of the alleged transfer of liability from partnership to proprietorship. It is also not the case of the petitioner that at the time when the transaction had taken place, the petitioner was not a partner of the partnership firm. The trial court rightly did not allow the amendment application.

4. I find no merits in the petition. The petition is hereby dismissed with cost of Rs.10,000/-.

SHIV NARAYAN DHINGRA J.

MARCH 02, 2010
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