

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 444/2010**

Date of Decision : 03.12.2010

SYED MANZOOR SHAH Appellant
Through Mr.B.L.Wali, Advocate

VERSUS

ABDUL KALAM Respondent
Through None

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? NO
2. To be referred to Reporter or not? NO
3. Whether the judgment should be reported in the Digest? NO

: **MOOL CHAND GARG,J (ORAL)**

CM No.21758/2010

Allowed subject to just exceptions.

Application stands disposed of.

FAO444/2010

1. This appeal has been filed by the appellant being aggrieved of the order dated 18.09.2010, whereby the application moved by the appellant under Order XXXIX Rule 2 A CPC has been dismissed by the Additional District Judge after holding that nothing has been brought to the notice of the court that the respondent has violated the orders of status quo granted in favour of the appellant.
2. On 15.05.2009 on an application filed by the appellant under Order XXXIX Rule 1&2 CPC on the basis of the report of Local Commissioner appointed earlier, the learned Additional District Judge has passed the following order :-

“In view of the report of the Local Commissioner, I am of the considered view that plaintiff has made a prima facie case in his favour. Balance of convenience is also in favour of the plaintiff and plaintiff will suffer irreparable loss, if the relief sought in the application under Order 39 Rule 1 & 2 CPC is not granted to him.

Learned counsel for plaintiff submits that his prayer is only limited to the order of status quo. Accordingly, it is ordered that till next date of hearing,

parties will maintain the status quo in respect of the property in question. Plaintiff to comply with the provisions of Order 39 Rule 3 CPC.”

3. The report given by the Local Commissioner has been taken note of by the Additional District Judge in the impugned order as follows:-

“The report of local commissioner shows that the defendant has converted the garage in question into a shop or place where business activity can be done. The local commissioner has also found some stitched and un-stitched clothes besides three machines and other material used for purpose of stitching. Local Commissioner also stated that renovation work was being carried out by defendant and the defendant has also employed Shri Mohd. Kamil to work in the garage/shop.”

4. The Additional District Judge further observed that :-

“Report of the local commissioner also reveals that Mohd. Kamil had stated that he was employed there only three days back and all the fixtures and fittings were new and new glass gate was installed in the garage in order to convert the garage into a shop. The local commissioner was also informed by Mohd. Kamil that the defendant had started the stitching work only three days before and since then he was working there.”

5. The grievance raised by the appellant before the Additional District Judge in his application under Order XXXIX Rule 2 A CPC was that the copy of the order dated 15.05.2009 was served upon the respondent and more so, the appellant vide its telegram dated 16.05.2009 has also informed the respondent about the order dated 15.05.2009. Despite that, the respondent in total disobedience and disrespect towards the aforesaid order has started operating from the garage, having converted it into shop and has started tailoring business from the said garage contrary to the orders passed by this court.

6. The Additional District Judge has taken note of the reply filed by the respondent to the application, where a defence has been taken by the respondent that there is no garage on the ground floor. There is only one tailoring shop which is in occupation and possession of the respondent and the respondent is running his tailoring shop in the said shop since the very beginning. The averment made by the appellant is baseless since even as per the report of the Local Commissioner, the respondent is running his tailoring shop in the garage converted into shop.

7. In view of the aforesaid, the tailoring shop being in existence as on the date of the visit of the Local Commissioner, the Additional District Judge found no merits in the application filed by the appellant and dismissed the same. The relevant observations made by the Additional District Judge are reproduced hereunder:-

“In view of the clear stand taken by the defendant in his reply, there appears to be typographical mistake in paragraph no.11 of his reply. Even otherwise the violation of the status quo order, if any on the part of the defendant is to be established by the plaintiff. The only allegation in the application is that the defendant has started the tailoring business in the garage whereas from the report of local commissioner as well as observation made by learned Predecessor of this court in her order dated 15.05.2009, it is revealed that defendant had been carrying on the tailoring business in the said garage which had been converted into a shop even at the time the local commissioner had visited the suit property.

Thus, I do not find any violation of status quo order by the defendant. Accordingly, application under Order 39 Rule 2A is dismissed.”

8. Having perused the record of this case and pleadings of the parties, I also do not find any infirmity in the impugned order passed by the Additional District Judge. The appeal is accordingly dismissed.

CM No.21757/2010

Dismissed as infructuous.

MOOL CHAND GARG, J

DECEMBER 03, 2010

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