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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.205 of 2010 & C.M. Appl. No.2649 of 2010

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23.02.2010

MANJULA GUPTA

.....Petitioner

Through: Mr. I.A. Khan, Advocate.

Versus

SUMIT VIHAR CO-OP. GROUP

.....Respondent

Date of Reserve: 11th February, 2010

Date of Order: February 23, 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 order of the trial court, operative part

of which reads as under :-

“Perusal of the record reveals that plaintiff has not been diligent in prosecuting this case. The issues in the matter were framed on 28.03.2005 i.e. more than 4 years ago and thereafter as many as 10 opportunities were given to the plaintiff to lead evidence in the matter, but no evidence in the matter was led by the plaintiff. This court vide order dated 21.01.2008 constrained to close the right of the plaintiff to lead the evidence. However, on an application U/s 151 CPC filed on behalf of plaintiff vide order dated 09.05.2008 this court taking sympathetic view and in the interest of justice allowed one opportunity to the plaintiff to lead evidence in the matter subject, however to the cost of Rs.1,500/-. Neither the cost were paid nor any steps were taken by the plaintiff to lead evidence in the matter therefore, this court vide order dated 25.03.2009 again close the P/E. Considering the conduct of the plaintiff in the matter, no ground to set aside order dated 25.03.2009 has been made out of this application. The application is without any merit. The same is accordingly dismissed.”

2. The aforesaid facts as recorded by the trial court are not disputed. It is not disputed that the petitioner had not paid the cost when the matter was taken up again for plaintiff's evidence, subject to payment of cost. Instead, the petitioner filed an application for waiver of the cost. The trial court dismissed the application for waiver of cost and closed the plaintiff's evidence. The petitioner again moved an application under Section 151 CPC for allowing the petitioner to lead evidence.

3. The petitioner had filed a suit for recovery of Rs.1 lac and mandatory injunction. The petitioner did not lead evidence in the suit for about four years and despite giving ten opportunities. I consider that the trial court rightly closed the evidence of the petitioner. The petitioner does not have any inherent right to continue a suit in perpetuity and not to lead evidence or not to pay the cost imposed by the trial court. Under Section 358(1) CPC, it is mandatory upon the trial court that if the cost as ordered by the trial court is not paid and the cost was a condition precedent for further prosecution of the case then, the court has not to allow further prosecution of the part of the litigation for which cost was imposed.

4. In the present case, further leading of evidence by the plaintiff was made subject to payment of cost. The plaintiff failed to pay the cost. The trial court was justified in closing the plaintiff's evidence. I find no infirmity in the order. The petition is hereby dismissed.

SHIV NARAYAN DHINGRA J.

FEBRUARY 23, 2010
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