

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

Date of Reserve: 1st February, 2010
Date of Order: 5th March, 2010

CM (M) No. 144/2010 & CM No. 1973/2010

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05.03.2010

Kiran Sood

... Petitioner

Through: Mr. Jaipal Singh, Advocate

Versus

Hansraj Singh & Ors.

... Respondents

Through: Ms. Sangeeta Chandra, Advocate for DDA

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?

JUDGMENT

By this petition, the petitioner has assailed an order dated 20th October, 2009 of the trial Court whereby the trial Court allowed an application under Order 9 Rule 13 CPC as well as an application under Section 5 of the Limitation Act and set aside the ex parte decree passed against the respondents.

2. The respondents no.1 & 2 herein had contended that the respondents were not served of the summons of the suit in which decree was passed against them and they learnt about the passing of decree when a notice of High Court was served on them in respect of RFA No. 10/2007 for 12th March, 2007 and when directions were given for supply of complete paper-book to the defendants. On receiving complete paper-book by the defendant on 21st March, 2007 and after going through the paper book respondents learnt about this decree and then after inspection of the record, made application under Order 9 Rule 13 CPC along with an application under Section 5 of the Limitation Act.

3. The applications filed by the respondents were hotly contested by the petitioner and the trial Court framed following issues:

1. *Whether the applicant is entitled to the condonation of delay on the grounds as raised in the application under Section 5 of the Limitation Act? – OP on parties*
2. *Whether there had been no valid service of the defendant? (OPA/defendant)*
3. *Whether the applicant/defendant is entitled to the setting aside of the judgment and decree dated 20.12.2006? – (OPA/defendant)*
4. *Relief.*

4. The trial Court after recording of evidence of both the sides gave its findings on the issues and came to the conclusion that the summons of Civil Suit No. 624/2004 were not served on the respondents (defendants in the suit). The trial Court allowed the application under Section 5 of the Limitation Act as well as application under Order 9 Rule 13 CPC.

5. By the present petition, the petitioner has assailed this order of the learned trial Court on merits and has taken a plea that the trial Court did not appreciate the evidence properly and allowed the applications without taking into consideration the facts.

6. It is settled law that under Article 227 of the Constitution of India this Court does not act as a Court of appeal neither this Court has to correct errors of facts or law which cropped up in the judgment of the trial Court. This Court can intervene under Article 227 only under the circumstances where the trial Court fails to exercise its jurisdiction or exceeds its jurisdiction or where the trial Court acts contrary to the settled legal position. The present petition is in the nature of an appeal against the order of the trial Court. This Court cannot re-appreciate the evidence and come to a different finding of fact about the service of summons of Suit No. 624/2007 made on the respondents. I, therefore find that the present petition was not maintainable and is hereby dismissed.

March 05, 2010
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SHIV NARAYAN DHINGRA, J.