

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

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Date of Judgment : 28.10.2010

+ **RSA No. 253/2008 and CM Appl No. 17978/2008 (for stay)**

M/s SYSTEMS INDIA PVT. LTD. Appellant
Through: Mr.P.P.Ahuja, Advocate.

Versus

**Ch.AISHI RAM BATRA PUBLIC CHARITABLE TRUST
AND ORS.**

.....Respondents
Through: Mr. Kartickay Mathur for
Mr. Ashok Chhabra, Advocates

**CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

INDERMEET KAUR, J.(Oral)

1. The impugned judgment is the judgment and decree dated 31.10.2008 vide which the First Appellate Court had reversed the finding of the Trial Judge dated 14.11.2008 thereby dismissing the suit of the plaintiff.

2. This is a second appeal. On behalf of the appellant, it is pointed out that along with the appeal under Section 96 of the Code of Civil Procedure an application under Section 5 of the Limitation Act, 1963 had also been preferred.

3. Perusal of the record shows that this application had been filed along with the appeal of which notice had been issued to the respondent vide order dated 1.02.2007. On 29.03.2007, matter had been listed for reply and arguments on the said application for 07.05.2007. On 19.07.2007, at the request of the appellant, the

application under Section 5 of the Limitation Act was directed to be heard along with main appeal.

4. Further perusal of the record shows that the impugned judgment i.e. the judgment dated 31.10.2008 had decided the appeal without adverting to the application under Section 5 of the Limitation Act. This is evident and apparent from the record which has been requisitioned. This has raised a substantial question of law.

5. In this view of the matter, it is a fit case where the matter should be remanded back to the First Appellate Court to decide the appeal afresh after adjudicating upon the application under Section 5 of the Limitation Act.

6. With these directions, this appeal is disposed of.

7. The matter is accordingly remanded back to the District Judge, Delhi, who will assign it to the concerned first Appellate Court. Parties to appear before Ld.District & Sessions Judge, Tis Hazari Courts, Delhi on 09.11.2010 at 10.30 AM.

8. Records be also sent back.

9. Appeal as also the pending application is disposed of.

INDERMEET KAUR, J.

OCTOBER 28, 2010

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