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

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+ **CM (M) No. 1407/2009 & CM APPL 17394/2009**

AJIT NAGAR

..... Petitioner

Through : Mr. Nalin Tripathi, Advocate

versus

KALKA PD AGGARWAL

..... Respondent

Through : None.

And

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+ **CM (M) No. 1515/2009 & CM APPL 18632/2009**

AJIT NAGAR

..... Petitioner

Through : Mr. Nalin Tripathi, Advocate

versus

KALKA PD AGGARWAL

..... Respondent

Through : None.

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

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

ORDER

16.04.2010

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1. The challenge in CM (M) No. 1407 of 2009 is to orders dated 1st October 2009, 13th October 2009 and 14th October 2009 passed by the learned Additional District Judge ('ADJ') in Suit No. 201 of 2006.

2. In CM (M) No. 1515 of 2009 the Petitioner challenges an order dated 4th December 2009 passed by the learned District Judge ('DJ') dismissing Transfer Petition No. 163 of 2009 by which the Petitioner had sought transfer of the aforementioned suit from the court of the learned ADJ who passed the aforementioned orders to any other Court of competent jurisdiction.

3. This Court has heard the submissions of Mr. Nalin Tripathi, learned counsel for the Petitioner at length and has also examined the records.

4. The aforementioned suit was filed on 25th July 2006 by the Respondent/Plaintiff against the Petitioner/Defendant seeking recovery of Rs.5 lakhs as damages on account of the alleged publication of a defamatory letter dated 16th June 2006. Issues were framed on 13th December 2006 and the Plaintiff's evidence was fixed on 23rd January 2007. The Plaintiff closed his evidence on 11th July 2007. The learned ADJ on that date fixed the evidence of the Defendant for 13th August 2007.

5. On 13th August 2007 the Defendant sought and was granted adjournment to 19th September 2007. Again an adjournment was sought and was granted subject to payment of costs to 30th November 2007. On that date the DW-1 was examined and last opportunity was granted to conclude the Defendant's evidence on 10th January 2008. No witness was summoned by the Defendant on 10th January 2008. The Court had to adjourn the case thereafter to 14th February and again thereafter to 28th May 2008. No witness was examined

by the Defendant on 25th August 2008 and again adjournment was granted subject to payment of costs of Rs.1,000/-.

6. The case was fixed for Defendant's evidence thereafter on 11th August 2008, 28th September 2008, 12th November 2008, 18th December 2008, 5th February 2009, 18th February 2009 and 11th July 2009. During these dates only three witnesses were examined and yet the Defendant's evidence was not closed. The case was then adjourned to 1st October 2009. The net result that was in more than two years' time the Defendant, despite being granted several adjournments, was able to examine only four witnesses.

7. For the hearing on 1st October 2009 process fee had been filed only for one witness. That witness was however not present in the morning of 1st October 2009. The learned ADJ directed issuance of bailable warrants in the sum of Rs.2,000/- against the said witness. In response to a query by the Court, learned counsel for the Defendant stated that if the said witness were to be examined then there would be no need to examine other witnesses. However, he was unable to say whether there were other witnesses to be examined. What happened at that stage it was recorded as follows by the learned ADJ:

“At this stage, counsel for Defendant shouted loudly without explaining any reason. He is asked to move appropriate application if needs for the same. He shouted that he is not interested to move application. However, case is passed over for 15 minutes for application to be moved by counsel for the Defendant.”

8. At 12.12 pm on the same date, the learned ADJ recorded as follows:

“An application is moved for direction under Section 151 CPC. At this stage, witness is appeared before this Court. Witness states that he could not appear in the morning as he is suffering from fever. Be awaited for counsel for the parties.”

9. After half an hour at 12.42 pm the following order was recorded:

“One witness Shri Khem Chand from SDM, Defence Colony appeared as summoned witness. Copy of application is supplied to counsel for the Plaintiff. It is stated by Defendant that his counsel is not responding to his mobile call. Since, witness is present and this witness cannot be allowed to go unexamined. Let this case be pass over for 2.00 PM for the examination of the witness.”

10. In the afternoon at 2.10 pm the learned ADJ passed the following order:

“It is stated by the Defendant that his counsel is busy in the Hon’ble Supreme Court in a case. This fact has been first time mentioned by the Defendant since morning. It appears that Defendant is only interested that witness go unexamined. It is directed to the Defendant either he has to examine this witness himself or to call his counsel. It is also observed that witness is a public servant and has appeared before this Court during office hour. Lot of public would have been suffered as the witness is present before this Hon’ble Court and public work is being suffered.

In the interest of justice, case again is pass over for 3.00 PM for awaiting of counsel for the Defendant.”

11. In the proceeding recorded at 3.05 pm the learned ADJ noted that although process fee was filed for only one witness for that date, in the

application for summoning the witnesses permission was sought for examining more witnesses. It was, accordingly, concluded that this was a delaying tactic. Further in the application filed by the Defendant it was alleged that the Court had some “annoyance with the counsel” and for this reason the Defendant wanted to engage some other counsel. However, the learned ADJ noted that “in the court he submits that his counsel will remain same.” While imposing costs of Rs.2,500/- upon the Defendant, the Court bound down the witness for the next date of hearing and adjourned the case to 13th October 2009 for cross-examination of the witness and for the remainder of the Defendant’s evidence.

12. It appears that after the above order was passed on 1st October 2009 the Petitioner filed Transfer Petition No. 163 of 2009 before the DJ seeking transfer of the case from the court of the learned ADJ. One of the grounds urged before this Court is that without waiting for the orders to be passed in the said transfer petition, the learned ADJ proceeded with the aforesaid suit on 13th October 2009. This Court fails to appreciate the criticism of the learned ADJ in this regard. He could not have adjourned the case merely because the said transfer petition was filed and in which no interim order staying the proceedings in the suit had been passed.

13. On 13th October 2009 while the Defendant remained present, his counsel was not present. The witness from the office of the SDM, who had been bound down for that date, was also present. The application filed seeking adjournment on the ground that a transfer petition had been filed in which the notice has been issued, was considered by the learned ADJ. It was noted

that the costs imposed by the previous order had not been paid. It was held that no ground had been made out for adjournment. Further costs of Rs.2,000/- were imposed on the Defendant. The Defendant declined to examine the witness who was present. In the circumstances, last and final opportunity was given to the Defendant to examine the remaining witnesses including the witness who was bound down for the next date i.e. 14th October 2009.

14. Mr. Nalin Tripathi, learned counsel for the Petitioner submits that the above two orders dated 1st and 13th October 2009 show that the learned ADJ was in a hurry to proceed with the suit. This Court finds that that this contention is entirely without basis. The detailed proceedings recorded on 1st October 2009 and 13th October 2009 show that the learned ADJ exercised a great deal of restraint in not passing any order adverse to the Petitioner/Defendant. There was sufficient ground to have closed the Defendant's evidence even as on 1st October 2009. However, the learned ADJ did not so. Even on the adjourned date 13th October 2009, which was almost two weeks thereafter, the learned ADJ decided to grant a final opportunity to the Defendant.

15. At this stage this Court would like to observe that given the number of adjournments that had already been granted in the matter, there was no justification for the learned counsel for the Defendant not being present on the adjourned date i.e. 13th October 2009. He was aware that on 1st October 2009 despite the witness was present, his examination did not take place only on account of the absence of the learned counsel for the Defendant.

Therefore, on the adjourned date i.e. 13th October 2009 it was imperative for the learned counsel for the Defendant to have remained present in the Court when the matter was called out.

16. The proceedings of 14th October 2009 show that none was present on behalf of the Defendant. The Defendant himself was not present. Learned counsel for the Plaintiff was present. The witness from the office of the SDM was present. At 12.27 pm the learned ADJ recorded as under:

“Case has been called 4 times since morning. Since morning neither Defendant appears nor counsel for the Defendant appears. Cost has also not been paid either to the Plaintiff or to the witness. Witness is from office of SDM, Defence Colony, Delhi who is ready with summoned record for examination.”

17. Thereafter, the learned ADJ noted the proceedings that had taken place on the three previous dates and then recorded as under:

“At this stage, it is objected by counsel for the plaintiff that defence of the Defendant be struck off under Section 35-B CPC. Witness is present before this Court who is Government servant despite of the fact that he has to discharge public functions. He appears repeatedly before this Court as per the directions. Moreover, this witness has also incurred expenditure for appearance before this Court and this Court imposed cost upon the defendant but no cost has been paid to this witness. Thus, in my considered opinion, evidence of this witness is closed and also qua summoned record of this witness, as defendant has failed to examine this witness despite repeated opportunities.”

The case was fixed for final arguments on 4th December 2009.

18. On 4th December 2009 the learned DJ by a detailed order dismissed the Petitioner's Transfer Petition No. 163 of 2009. The learned DJ observed in the impugned order that the records did not substantiate the allegations that the presiding officer was annoyed with learned counsel for the Defendant or under the influence of learned counsel for the Plaintiff. It was correctly observed as under:

“A court mentions about the conduct of a party or a litigant or the counsel in the order sheet, which is just to remind that party/counsel of his duty of the proper behaviour in the court towards the Presiding Officer or towards the opposite counsel/party. That would never mean that a Presiding Officer is prejudiced against a party or a counsel. The observations of the court are for that date and for that particular proceedings. The litigants and the lawyers appearing in the cases are neither friends nor Foe to the Presiding Officer of the Court.”

After perusing the comments called for from the learned ADJ, the learned DJ concluded that the allegations were wholly unsubstantiated.

19. Learned counsel for the Petitioner/Defendant earnestly pleaded that one last opportunity should be given to the Defendant, subject to terms, to conclude the examination of his witnesses on a single date. He assured that no further adjournment would be sought. He however submitted that case should be transferred to some other court.

20. This Court does not find the above submissions to be either acceptable or reasonable. The facts of the case speak themselves. The conduct of learned counsel for the Defendant/Petitioner as well as the Defendant himself is unacceptable. It is important that the litigants are not encouraged to seek endless adjournments for concluding their evidence, thereby unnecessarily delaying the progress of a trial. The impugned orders passed by the learned ADJ reflect the manner in which the Defendant and his counsel have not unjustifiably sought adjournments thereby testing the patience of the Court. To accede to the request of counsel for the Defendant for further opportunity would amount to encouraging abuse of the process of Court.

21. In the above circumstances, this Court is satisfied that none of the impugned orders call for interference.

22. The petitions and the pending applications are, accordingly, dismissed.

S. MURALIDHAR, J.

APRIL 16, 2010

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