

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: February 17, 2010
Date of Order: February 23, 2010

+ CM(M) 223/2010

%

23.02.2010

Arman

...Petitioner

Through: Mr. D.D. Sharma, Advocate

Versus

Sakeela Begum

...Respondent

Through:

JUSTICE SHIV NARAYAN DHINGRA

- | | | |
|----|---|------|
| 1. | Whether reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. | To be referred to the reporter or not? | Yes. |
| 3. | Whether judgment should be reported in Digest? | Yes. |

JUDGMENT

1. By this petition under Article 227 of the Constitution of India, the petitioner has assailed an order passed by learned trial court whereby the cross examination of PW-1 was closed because of non-appearance of the counsel for the petitioner and an adjournment was refused.

2. A perusal of order passed by learned trial court shows that the issues in the matter were framed on 24th September 2004 and the matter was fixed for evidence. The counsel for defendant (petitioner herein) sought an adjournment on 14th February 2005, 29th March 2005, 27th April 2005, 18th May 2005 and 7th July 2005 for cross examination but still did not cross examine this witness despite all these opportunities and adjournments. Then the petitioner moved an application under Section 151 CPC which was dismissed and the matter again got fixed for evidence on 20th March, 2007. Again an adjournment was granted and the matter was listed as last and final opportunity for cross examination of PWs. The matter was listed on 8th October 2007 and then again on 29th March, 2008. The petitioner again sought an adjournment for cross examination, which was granted. The matter again came up for hearing on 22nd July 2008, 21st November 2008, 9th February 2009 and 28th April, 2009. On all these hearings, adjournments were granted at the instance of petitioner(defendant). On 13th May, 2009, PW-1 was partly cross examined by the counsel for defendant and further cross examination was deferred and the matter was listed for remaining cross examination of this witness on 4th August, 2009. On 4th August, 2009 when the matter was taken up, witness was present in the morning when proxy

counsel for petitioner appeared and told the Court that the counsel for defendant (petitioner) had gone to Sonapat Court in some matter and was likely to come after lunch. Looking at the manner in which the witness had been harassed in this case for the last four years and the adjournments were sought, the trial court found no reason to ask the witness to keep on waiting for the counsel who had gone to Sonapat Court and he closed the cross examination.

3. It is submitted by counsel for the petitioner/ defendant that he had gone to Sonapat in a civil case of his junior and he got stuck up in the traffic and therefore was late in reaching the Court. Sonapat Courts start working from 7 am and he was hopeful of coming back by 10 and the trial Court should not have passed an order closing the evidence as there was likelihood of his reaching the Court after lunch.

4. It is seen that most of the adjournments were sought by the petitioner's counsel on personal grounds. The Civil Procedure Code specifically provides that a party cannot take more than three adjournments during entire life of the case. The record would show that the defendant (petitioner) had taken more than 20 adjournments and still was not satisfied. Only for cross examination of the witness the number of adjournments sought was more than ten. I find that the sole intention of the petitioner seemed to be to exhaust the plaintiff and harass the plaintiff (respondent herein) by making him repeatedly come to the Court, wait from 10 am to 4 pm and then go back unexamined. Filing of a case by a person for seeking remedy through Court of law cannot be allowed to turn into a punishment for the person. It only seems that in this case, the defendant (petitioner) was bent upon to see that the plaintiff was punished for approaching the Court for redressal of his grievance by making him come repeatedly to the Court for his evidence and seeking adjournments one after another on excuses including personal grounds of the advocate. This tendency of seeking adjournments on personal grounds of the Advocates must be discouraged and unless and until the personal grounds are of exceptional nature and the specific ground is stated and such grounds makes appearance of the counsel in the Court practically impossible, no adjournment should be granted on personal grounds.

5. I find no force in this petition. The petition is hereby dismissed. No orders as to costs.

February 23, 2010
rd

SHIV NARAYAN DHINGRA J.