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HIGH COURT OF DELHI : NEW DELHI

CM (M) No.959/2010 & CM Nos. 13241/2010 & 13243/2010

% Judgment reserved on: 28th July, 2010

Judgment delivered on: 30th July, 2010

Sh. Bipul Kumar
R/0 7, UA, Top Floor
Pista Bhawan, Jawahar Nagar
Delhi - 110007

....Petitioner.

Through: Petitioner in person

Versus

Dinesh Sharma
R/o 77-B, Jawahar Nagar,
Delhi-110007

....Respondent.

Through: None

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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

V.B.Gupta, J.

This petition under Article 227 of the Constitution of India has been filed by the petitioner seeking quashing of orders dated 2.2.2009 and 14.5.2010, passed by Senior Civil Judge, Delhi.

2. Respondent herein had filed a suit against the present petitioner, the summons of which were received by petitioner on 2.8.2008 directing him to appear in the Court on 22.9.2008.

3. Petitioner had to file the written statement within the statutory period but he failed to file the same. Accordingly, vide order dated 2.2.2009, right of petitioner to file the written statement was closed.

4. Thereafter, petitioner filed an application under Section 151 of Code of Civil Procedure (for short as 'Code') for recalling of the order dated 2.2.2009. Application for recalling of the order was dismissed on 14.5.2010.

5. Petitioner appeared in person and he himself argued his case contending that he had received the copy of summon on 2.8.2008. Since copy of plaint and documents annexed with it were not complete, he appeared before the trial court on the date fixed and informed the Judge about the non-supply of complete documents. Complete set of plaint and document has still not been supplied to him.

6. Under these circumstances, he was unable to file his written statement during the statutory period and as such impugned orders are liable to be set aside.

7. Present petition has been filed under Article 227 of the Constitution of India. It is well settled that jurisdiction of this Court under this Article is limited.

8. In *Waryam Singh and another vs. Amarnath and another*, AIR 1954, SC 215, the court observed;

“This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in – ‘Dalmia Jain Airways Ltd. V. Sukumar Mukherjee’, AIR 1951 Cal 193 (SB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

9. In light of principles laid down in the above decision, it is to be seen as to whether present petition under Article 227 of the Constitution of India against impugned order is maintainable or not.

10. As per petitioner’s own case since he has received the summons on 2.8.2008, thus he was to file the written statement within the statutory period of 30 days, which he failed to file the same. As per copy of order sheet placed on record, petitioner appeared in person on 22.9.2008. The

court granted 30 days time to file the written statement and the matter was adjourned to 17.12.2008.

11. On 17.12.2008 petitioner did not appear in the Court nor did he file his written statement. The court observed that statutory period to file written statement has lapsed and as petitioner was not present in the interest of justice, the trial court deferred the passing of any adverse order against the petitioner and adjourned the matter for 22.1.2009.

12. On 22.1.2009 again petitioner was not present and matter was adjourned to 2.2.2009.

13. On 2.2.2009, the court passed the following order:-

“The defendant was served in the matter for 22.9.2008. The W.S. has not been filed in the matter. The statutory period to file the W.S has lapsed. At this stage it is submitted by the defendant that he was not supplied the documents in the matter on 22.9.2008. The defendant had appeared before the court and at that time no such request was made.

The right to file the W.S. of defendant stands closed. List for ex-parte evidence now on 4-6-09.

Vinod Yadav
SCJ cum RC (West)”

14. Thus, it is apparent from the record that as petitioner was served on 2.8.2008, he had to file the written statement within 30 days but he did not file the same. Thereafter, on 22.9.2008 the trial court granted him 30 days

time to file the written statement. In spite of that, the petitioner did not file his written statement.

15. The only plea taken up by petitioner in the present petition is that he was supplied incomplete copy of plaint and documents and thus he could not file his written statement. This plea of the petitioner is devoid of any merits. Petitioner for the first time on 2.2.009 took the plea before the trial court that he has not been supplied with the documents.

16. The trial court observed that petitioner had appeared before this Court on 22.9.2008 but at that time no such request was made and thus right to file the written statement of the petitioner was closed.

17. Thus, it is apparent from the record that petitioner did not file the written statement within the statutory period and even till date he had not filed the same. This shows about the conduct of the petitioner, who is bent upon delaying the proceedings pending before the Trial Court.

18. Assuming for the arguments sake that petitioner was supplied incomplete copy of plaint or documents, he could have very well inspected the record and could have filed his written statement.

19. As apparent from the record, the petitioner has no intention to file written statement from the day one and was interested in just prolonging the suit.

20. Under these circumstances, no infirmity, illegality can be found in the impugned orders passed by the trial court. The present petition under Article 227 of the Constitution of India is not maintainable and same is hereby dismissed.

CM No. 13241/2010

21. Dismissed.

CM No. 13243/2010

22. Dismissed.

23. Copy of this order be sent to the Trial Court.

30th July, 2010
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V.B.GUPTA, J.