

(2010) 02 DEL CK 0160

In the Delhi High Court

Case No : C.M. (M) No. 719 of 2008 and C.M. No. 8628 of 2008

Gurudwara Sri Guru Singh Sabha Regd. thru. Secy. Sardar
Gurjeet Singh

APPELLANT

Vs

Charanjit Singh Bhasin

RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, Order 9 Rule 9
Constitution of India, 1950 — Article 227

Citation : (2010) 02 DEL CK 0160

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Arun Kumar, for the Appellant; Sumant, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this petition the petitioner has assailed an order dated 28th April, 2008 whereby the learned Additional Rent Controller allowed an application under Order 9 Rule 9 CPC for restoring an application under Order 9 Rule 13 CPC and restored the application under Order 9 Rule 13 CPC to its original number subject to cost of Rs. 500/-.

2. This application for restoration of application under Order 9 Rule 13 CPC was made by the respondent giving circumstances under which he personally could not appear in the Court and his Counsel did not follow his instructions properly and did not appear in the Court. He made a complaint against his Counsel and engaged another Counsel and filed the present application. The order allowing application is assailed by the petitioner on the ground that the Court ignored the judgment delivered by this Court that the litigant himself has to be vigilant and blame cannot be put on the Counsel.

3. A perusal of Order would show that the learned ARC had taken into account the fact that mother of the respondent had died a few days before the date of hearing [hearing was within the thirteenth (tehnravi kriya) day] and that was a

sufficient ground for non appearance of the respondent on that date. The learned ARC had also gone through the record of illness of the respondent and after considering both the aspects; death of his mother and his own illness allowed the application under Order 9 Rule 9 CPC.

4. Under Article 227 of Constitution of India this Court does not act as a Court of appeal and cannot substitute its own decision and conclusion after appreciation of facts in place of conclusion arrived at by the trial Court. The order was within jurisdiction of the trial Court and the trial Court after appreciating the documents had found that there was sufficient ground for non appearance of the respondent. I find no reason that this Court should substitute its own appreciation and opinion about the sufficiency of the grounds, while considering a petition under Article 227. I, therefore find no merits in the petition. The petition is hereby dismissed.