

(2010) 09 DEL CK 0336

In the Delhi High Court

Case No : C.M. (M) No. 1179 of 2010 and C.M. No. 16430 of 2010

Mr. Ashok Aggarwal and Om Ram Dharam Kanta

APPELLANT

Vs

Smt. Reena Aggarwal and Others

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 172 DLT 710

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Laliet Kumar, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—By way of present petition filed under Article 227 of the Constitution of India, there is challenge to order dated 25th May, 2010, passed by Additional District Judge, Delhi. Vide impugned order, petitioners' evidence was closed.

2. Brief facts as per petitioners lists of dates and events are that in April, 2003, respondents Nos. 1 and 2 herein (petitioners in trial court) filed suit for possession, recovery of rent, damages and permanent injunction against present petitioners and others (defendants in trial court). During the trial respondents examined Mr. Pawan Aggarwal (PW1) and after his examination-in-chief, matter was kept for cross-examination. At that point of time, petitioners were constrained to change their counsel. The new counsel due to paucity of time, complexities of various inter se litigations, non adjustment of diary through his associates requested the trial court to adjourn the matter. Trial court without considering the requests on behalf of petitioners, closed the opportunity of the petitioners to cross-examine PW-1 vide its order dated 27th January, 2010.

3. Petitioners thereafter, filed an application for recalling of order dated 27th January, 2010. Trial court without issuing notice on this application, kept the

same for 25th May, 2010. On that date, vide impugned order trial court closed the evidence of petitioners.

4. It is contended by learned Counsel for petitioners that in the absence of opportunity to lead evidence of the petitioners and also in the absence of cross-examination of PW, the matter would become a one side affair and the petitioners should not suffer for no-fault on their part. Trial court wrongly closed the right of the petitioners to cross-examine the witness.

5. It is also contended that no order was passed on the application of the petitioners for recalling of order dated 27th January, 2010 for cross-examining the witness.

6. 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.

7. In Waryam Singh and Another Vs. Amarnath and Another, the court observed;

This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in - Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee, 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.

8. 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.

9. As apparent from the record, application for recall of PW-1 for the purpose of cross-examination has not yet been disposed of by the trial court and the same has been kept pending which is apparent from order dated 14th May, 2010 passed by trial court. Relevant portion read as under;

At this stage, counsel for the defendant presses his application moved earlier to cross-examine the plaintiff's witness. It is stated that copy of this application is on the file. Ld. Counsel for the plaintiff shall collect copy of this application in evening from the Ahlmad of this Court. plaintiff shall file reply to this application on the next date of hearing. However, it is made clear to all the parties that this application shall be disposed of after conclusion of DE of DW-1.

10. As per record, on 25th May, 2010, when the matter was listed for petitioners' evidence no witness was present nor any affidavit was ready. Relevant portion read as under;

No DE is present. No affidavit is ready. No advance copy is supplied. No explanation is offered. Ld. Counsel submits that he has to examine five witnesses. Not even single witness is present. Affidavit of single witness is not prepared. An application for summoning of witnesses was moved on 22.5.2010 only three days before the date and the said application was dismissed by order on same date. Ld. Counsel for the defendant seeks one more opportunity.

Strongly opposed. Ld. Counsel for the plaintiff submits that the Hon'ble High Court has already passed directions for speedy disposal of this case. No witness is present. It appears that defendant is intentionally causing delay towards the disposal of the suit. The Hon'ble High Court by order dated 21.12.2009 observed;

In the circumstances, the Addl. District Judge is requested to dispose of the suit expeditiously. It is further directed that further adjournments be not granted save by recording reasons for the same in writing and if adjournment is sought by the respondent/defendant/their counsel, the trial court to first satisfy itself as to the sufficiency of the reason on which adjournment is granted and if so to record the reasons for the said satisfaction; else the adjournment to be refused and the suit to be proceeded with.

The counsel for the petitioners/plaintiffs states that he will co-operate in the early disposal and shall not seek any adjournment himself.

In view of observations made herein above, no ground for adjournment is made out. DE is closed.

11. Since, no evidence of petitioners was present nor any affidavit of any witness was filed and no explanation was given, the counsel for petitioners submitted that he has to examine five witnesses, but not even single witness was present nor affidavit of any witness was prepared. The application for summoning of the witnesses was moved on 22nd May, 2010 only three days before the date, which application was dismissed by the order of the same date. This shows about the callous attitude on behalf of the petitioners in pursuing the matter.

12. In Supreme Telecommunication Ltd. Vs. RPG Transmission Ltd., a Division Bench of this Court observed that:

The rule of procedure are handmade of justice and should be implemented to achieve the ends of justice. The procedural law despite being regulatory in nature cannot come to the advantage or rescue of a litigant who abuses the process of the Court and keeps on taking adjournment after adjournments. A litigant who does not take steps as required by the Court despite orders from time to time cannot claim equity from the Court. Reference can be made to a recent judgment of this Court in the case of The Executive Engineer and Ors. v. M/s Machinery Parts Corporation being RFA No. 632/2000 decided on 27.4.06 where the Court held as under:

The conduct of the defendants before the Court was of such a nature that the order passed by the learned Trial Court would not call for any interference. Furthermore, the court cannot keep on adjourning the case for evidence of the parties indefinitely and grant adjournments at the mere asking of the parties, without any plausible cause or reason.

13. It is well settled that frivolous litigation clogs the wheels of justice making it difficult for courts to provide easy and speedy justice to genuine litigants. It has also been observed in large number of cases that meritless litigation should be

dealt with heavy hands. Any litigant who indulges in mindless litigation and unnecessarily waste the precious time of the Courts should not be spared. He must pay heavy costs for wasting time of the Court.

14. Thus, impugned order passed by trial court is based on sound reasoning and it does not call for any interference. There is no illegality and infirmity in the impugned order. Present petition is most bogus and frivolous one and is also meritless and same is hereby dismissed.

C.M. No. 16430/2010

Dismissed.