

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: 2nd February, 2010

Date of Order: 9th March, 2010

CM (M) No. 496/2009 & CM No. 7663/2009

% 09.03.2010

Smt. Rampyari & Ors. ... Petitioners Through: Mr. Rakesh Prabhakar, Advocate

Versus

Ms. Kamlesh ... Respondent Through: Respondent-in-person

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

By this petition, the petitioner has assailed an order dated 25th March, 2009 whereby an application of the petitioner for recalling witness PW-2 for cross examination, whose cross examination was closed on 29th September, 2008 by the trial Court, was dismissed. The application for recalling was made on 6th December, 2008. The trial Court after observing the history and manner in which the petitioners impeded the trial, found no force in the application and dismissed the application.

2. This case represents a typical example how the trial goes on in Indian Courts and how the Courts are taken for granted. Issues in this case were framed on 3rd August, 2006 and thereafter plaintiff's witnesses appeared for their testimony on 21st February, 2007, when the cross examination of the witnesses was to be conducted. An application was made on behalf of the petitioner stating that their Counsel had suddenly fallen ill and adjournment was sought, which was allowed. Next date for cross examination was fixed as 16th April, 2007. On 16th April, 2007 when witness appeared for cross examination an application was made on behalf of defendant no.8 stating that there was a death in the family of the petitioners' Counsel case be adjourned. The case was then adjourned for 17th July, 2007 for cross examination of the plaintiff. On 17th July, 2007 a proxy Counsel appeared and stated that the petitioners' Counsel was down with fever and adjournment was sought which

CM (M) No. 496/2009 Smt. Rampyari & Ors.v. Ms. Kamlesh Page 1 of 3 was granted and case was listed for 17th September, 2007. On 17th September, 2007 again a prayer was made to the Court stated that the Counsel for the petitioners was down with fever and adjournment was sought. The trial Court observed that there was no written request made on behalf of the Counsel for the petitioners. The same excuse was being taken again and again so, the Court closed the cross examination of PW-1. Again an application was made on behalf of the petitioners for recalling PW-1 for cross examination. The application was allowed vide order dated 25th April, 2008 subject to cost of Rs.500/- and the case was listed for remaining cross examination of PW-1 on 3rd July, 2008. On 3rd July, 2008 again, Counsel for the petitioner made a prayer for adjournment on the ground that he had not gone through the relevant record and could not prepare the cross examination. This

adjournment was allowed subject to cost of Rs.1,000/- and a last opportunity was given. The matter was now listed on 18th August, 2008, and the Counsel for the petitioners again did not appear and it was told that he was busy in High Court. Since it was the last opportunity and the matter had already been passed over twice, the Court refused to give further pass over or adjournment. The other Counsel Mr. B.N.Sharma who had appeared for the petitioners, cross examined the witness and this is how PW-1 was treated and cross examined in the Court. The matter was then listed for cross examination of other witnesses on 29th September, 2008. The witnesses appeared and were present in the Court since morning. The counsel for the petitioners again did not turn up and the case was passed over twice and at the third call still when the counsel for the petitioner was not available, the Court closed the cross examination of this witnesses. The application for recalling them was made after 2 1/2 months and was dismissed by the trial Court by a speaking order noting the history of the case. The present petition has been filed by the petitioner for recalling the order.

3. I consider that the manner in which petitioners had impeded the trial and the manner in which the treatment was given to the witnesses, the petition deserves to be dismissed with heavy costs. It only seems that the petitioners had taken the Courts for granted. It is considered as if Courts exist for providing business to the advocates and if advocates are busy in High Court or in other Courts and choose not to appear for false and lame excuses, the witnesses are to suffer and the system has to suffer, the party has to suffer but the advocates' business should not suffer. I consider this attitude towards the litigation and courts must be brought to an end it must be made clear that the Courts do not exist for providing business to the advocates. They exist for adjudicating the disputes between the parties and the

CM (M) No. 496/2009 Smt. Rampyari & Ors.v. Ms. Kamlesh Page 2 of 3 witnesses or litigants cannot be given shabby treatment by taking adjournment after adjournment in the Courts as if they had done something wrong by bringing suit to the court and they are made to appear in the Court 20 times when the evidence can be over in one hearing.

This petition is hereby dismissed with cost of Rs.25,000/- to be paid to the respondent.

March 09, 2010 SHIV NARAYAN DHINGRA, J. vn

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