

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 8th January 2010
Date of Order: February 02, 2010

CM(M) No. 1965/2006

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02.02.2010

Nandita Chaudhary

... Petitioner

Through: Mr. R.K.Saini, Advocate

Versus

Surat Singh Rao

... Respondents

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

This petition has been preferred by the petitioner against order dated 14th July, 2006 whereby an application under Section 151 CPC made by the petitioner for issuing summons of the witnesses made on the same date was dismissed.

2. Brief facts relevant for the purpose of deciding this petition are that the petitioner filed a suit claiming damages of Rs.10 lac against the defendant on the ground of defamation. In the suit, the petitioner mentioned the name of her neighbor Satnam Aneja as the person in whose eyes the esteem and reputation of the petitioner got lowered due to an alleged false complaint made by the defendant. Similarly, she had desired to examine Shri B.S.Yadav for the same purpose. Affidavit of these two witnesses viz. Shri Satnam Aneja and Shri B.S.Yadav were filed in the Court in August, 2005. Thereafter, these witnesses were to appear for their cross examination in the Court. These witnesses did not appear for their

examination in the Court despite opportunities. When the matter was listed on 25th May, 2006, the Court waited for the witness Satnam Aneja upto 2.20 p.m.. At 2.20 pm when the witness was not available, the Court observed that last opportunity was being granted to the witness for his cross examination on 14th July, 2006 and if the witness was not available, for any reason, his evidence shall be taken out of record. On 14th July, 2006 this application under Section 151 CPC was made by the petitioner stating that Shri Satnam Aneja was not able to come to the Court due to threat extended by the defendant. It was further stated that two witnesses viz. Satnam Aneja and Shri B.S.Yadav were avoiding coming to Court because of intimidation by the defendant. Application was opposed by the defendant on the ground that this was merely a ploy to seek adjournment and nine dates had already been given to the plaintiff for examination of witness but the witness was not examined. The petitioner, if wanted to summon the witnesses through Court process, the application should have been made well in time for summoning the witnesses. The application for examining the witnesses on the date of evidence itself was not maintainable. The trial Court after considering the fact that ample opportunities had already been given to the plaintiff and this was the last opportunity, dismissed the application and also observed that no steps were taken by the plaintiff for summoning witnesses for the date fixed.

3. The Counsel for the petitioner has relied on Order 16 Rule 1 Sub Rule 2 CPC and stated that it was obligatory on the Court to issue summons for attendance of the witness on filing the application by the petitioner.

Order 16 Rule 1 reads as under:

1. List of witnesses and summons to witnesses – (1) on or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.
- (2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is

proposed to be summoned.

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Courts or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court in this behalf within five days of presenting the list of witnesses under sub-rule (1).

1A. Production of witnesses without summons – Subject to the provisions of sub-rule (3) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.

4. It is apparent from this Order of CPC that list of witnesses is to be filed within 15 days of framing of issues and thereafter the Court has to be informed as to out of the list which of the witnesses the party was desiring of summoning through Court process and the party was given liberty to obtain summons on making an appropriate application within 05 days of presenting the list of witness under Sub Rule (1). The intention of the legislature is clear that an application has to be made well in advance from the date fixed for evidence and the application cannot be made just on the date when the evidence is to be recorded.

5. The plea taken by the petitioner about intimidation does not have any force. Both these witnesses had filed their affidavits without appearing in the Court. If they had been intimidated, the petitioner could have filed an affidavit of these witnesses that they were not able to come to the Court due to intimidation given by the defendant and Court could have provided protection to them. No request was made either by the petitioner or by the witnesses themselves that they needed court protection. There is no complaint filed by the petitioner or by the witnesses to any authority that any threat/intimidation was extended by the defendant to the witnesses. It appears that petitioner was not able to bring the witness to the Court, although the petitioner had procured affidavits of the witnesses, despite nine opportunities given and ultimately petitioner made this application under Section 151 on the date when

the Court had made it clear that evidence shall be closed.

6. A perusal of affidavit of these witnesses would also show that witnesses were neighbors of the petitioner. Witness Shri B.S. Yadav had stated that he was knowing petitioner i.e. granddaughter of Chaudhary Surat Singh very well since long. Witness Satnam Aneja had stated that he signed even the closure report of the police and he was living in neighborhood of petitioner for last 40 years, he had also participating in the police enquiry. I find no reason that these witnesses, so close to the petitioner, could not have filed affidavits that they were being intimidated or threatened by the respondent or they could not have lodged a complaint with the authorities of threatening against defendant.

7. I, therefore consider that the trial Court rightly found that the application was merely another effort to drag the case further and the trial Court was right in observing that sufficient opportunities were already given to the petitioner to produce witness and no further opportunity was required to be given. I find no merits in the petition. The petition is hereby dismissed.

February 02, 2010
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SHIV NARAYAN DHINGRA, J.