

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 3954 of 2023

Petitioner :- Musammat Afreen Begum

Respondent :- Smt Bela Devi

Counsel for Petitioner :- Manish Singh

Counsel for Respondent :- Ravish Chandra Srivastava, Vijay Kumar Ojha

Hon'ble Jayant Banerji, J.

1. Rejoinder affidavit filed today is taken on record.
2. Heard Shri Manish Singh, learned counsel for the petitioner and Shri V.K. Ojha, learned counsel appearing for the respondent.
3. This petition has been filed seeking the following reliefs:-

"i) To quash the order dated 04.03.2023 passed by Civil Judge Senior Division Varanasi in Misc. Case No.87 of 2023 (Bela Devi Vs. Musammat Afreen Begum & others) Annexure No.5 to this petition.

ii) To direct the Civil Judge Senior Division Varanasi not to proceed with Misc. Case No.87 of 2023 (Bela Devi Vs. Musammat Afreen Begum & others) pending before Civil Judge Senior Division Varanasi.

iii) To issue any other, order or direction which this Hon'ble Court may deem fit and proper in the present case.

iv) To award the cost of the petition."

4. The order under challenge is the one dated 04.03.2023 passed in Misc. Case No.87 of 2023 (Bela Devi vs. Musammat Afreen Begum & Ors.), which is an application filed under Order IX Rule 13 read with Section 151 CPC by the defendant no.2 in Original Suit No.694 of 2021 which suit was decreed pursuant to a judgment and order dated 18.04.2022 under Order XII Rule 6 CPC *ex-parte* against the defendant no.2. The order dated 04.03.2023 is quoted below :-

"न्यायलय सिविल जज सी०डि० वाराणसी।
जे०ओ० कोड- यू०पी० 2077
सी०एन०आर० नम्बर- यू०पी०वी०आर० 05-000308-2023
प्रकीर्ण वाद संख्या:- 87 /2023
बेला देवी ----- बनाम ----- मु० आफरीन बेगम वगै०

दिनांक:- 04.03.2023

आज प्रार्थिनी द्वारा प्रार्थनापत्र 4 ग मय शपथपत्र 5 ग अन्तर्गत आदेश 9 नियम 13 व धारा 151 सिविल प्रक्रिया संहिता दाखिल किया गया। प्रकीर्ण वाद के रूप में दर्ज हो। विपक्षीगण को नोटिस जारी हो। प्रार्थी पैरवी अन्दर 7 दिन करें। पत्रावली वास्ते आपत्ति/निस्तारण दिनांक 11.04.2023 को पेश हो ।

सिविल जज (सी०डि०), वाराणसी।"

5. The sole contention of the learned counsel for the petitioner is that the application under Order IX Rule 13 CPC would not be maintainable in the facts and circumstances of the case, inasmuch as an alternative remedy of appeal, in view of the provisions of Order XLI Rule 4 CPC, would be available before the appellate court. In support of his contention, learned counsel for the petitioner has relied upon a judgment of the Calcutta High Court passed on an application under Order IX Rule 13 CPC bearing GA No.1494 of 2009 in Civil Suit No.145 of 1991 (Smt. Utpala Deb & Ors. vs. Smt. Sita Devi Lohia & Ors.).

6. Learned counsel for the respondent has opposed the petition on the ground that the maintainability of the matter can be argued by the petitioner before the court that is in *seisen* of the application under Order IX Rule 13 CPC.

7. A perusal of the judgment dated 18.04.2022 in Original Suit No.694 of 2021 reflects that it was passed *ex-parte* against the defendant no.2, the petitioner in the present case, and the suit was, accordingly, decreed. An application under Order IX Rule 13 read with Section 151 CPC dated 04.03.2021, which was registered as

Misc. Case No.87 of 2023, was filed by the petitioner in which the order impugned order was passed.

8. There is no merit in the submission of learned counsel for the petitioner. In case, the defendants seek to assail the proceeding under Order IX Rule 13 CPC, it is for them to raise the issues before the court concerned. The judgment of the Calcutta High Court, that is relied upon by the learned counsel for the petitioner, was passed on an application under Order IX Rule 13 CPC by the Court exercising ordinary original civil jurisdiction and not appellate or supervisory jurisdiction.

9. Accordingly, no interference is called for and this petition is, therefore, **dismissed**.

Order Date :- 16.11.2023
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(Jayant Banerji, J.)