

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 5192 of 2023

Petitioner :- Shri Moti Singh Sikarwar

Respondent :- Devendra Singh And Another

Counsel for Petitioner :- Tanisha Jahangir Monir

Counsel for Respondent :- Bhuvnesh Kumar Singh, Amit Srivastava, Kartikeya Saran

Hon'ble Jayant Banerji, J.

1. This petition has been filed seeking to set aside the order dated 15.03.2023 passed by Addl. District Judge, Court No. 8, Agra in Misc. Appeal No. 223 of 2022 and judgement and decree dated 18.05.2019 passed by the Addl. Civil Judge (Senior Division), Court No. 4, Agra in O.S. No. 796 of 2017- (Devendra Singh Advocate & another Vs. Moti Singh Sikarwar) and the impugned order dated 03.08.2022 passed by the Addl. Civil Judge (Senior Division), Court No. 1, Agra in Misc. Case No. 234 of 2019- (Shri Moti Singh Sikarwar Vs. Devendra Singh Advocate & another).

2. Mr. H.N. Singh, learned Senior Advocate, on instructions states that he is not pressing the challenge to the *ex-parte* judgment dated 18.5.2019 passed by the Additional Civil Judge, Senior Division, Court No. 4, Agra in Original Suit No. 796 of 2017.

3. The facts as stated in the petition is that earlier a suit bearing OS No. 26 of 2012 (Ajay Veer Singh Vs. Moti Singh and Others) was filed by the plaintiff-respondent No.2, seeking compensation with interest from the defendants on account of defamation of the plaintiff caused by the

defendants therein. By a judgment and order dated 20.11.2018, the Original Suit No. 26 of 2012 was dismissed.

4. In the meanwhile, another suit bearing OS No. 796 of 2017 (Devendra Singh and Another Vs. Moti Singh) came to be filed by the plaintiff-respondents in the court of the Civil Judge, Senior Division, Agra, seeking compensation of Rs. 20 Lakh from the defendant-petitioner on the ground that a false complaint had been lodged by the defendant-petitioner against the plaintiff-respondents before the Bar Council of Uttar Pradesh, labelling serious and false allegations, which led to the disciplinary committee of the Bar Council summoning the plaintiff-respondents in various districts on various dates and resulting in defamation of the plaintiff-respondents.

5. It appears that in the aforesaid suit of 2017, an order was passed on 13.7.2018 for proceeding under Order VIII Rule 10 CPC. An application 20C was filed for setting aside that order. The aforesaid application was dismissed on 1.10.2018. Thereafter, by means of an *ex-parte* judgment and order dated 18.5.2019, the suit was decreed. The petitioner then filed an application dated 1.7.2019 under Order IX Rule 13 read with Section 151 CPC supported by his own affidavit. By means of an order dated 3.8.2022, the aforesaid application under Order IX Rule 13 CPC was dismissed.

6. The petitioner challenged the aforesaid order of 3.8.2022 by means of a Miscellaneous Appeal No.223 of 2022, which also came to be dismissed by means of the impugned judgment and order dated 15.2.2023.

7. The contention of the learned counsel for the petitioner is that the rejection of the application under Order IX Rule 13 is wholly unjustified as the petitioner could not attend the court on the dates due to genuine mistake and oversight, and also due to the fact that his son had fallen ill for an extended period of time. Learned counsel has referred at length to the order of the trial court to contend that without there being any evidence, the court recorded that during the suit, the attitude of the plaintiff was to delay the proceedings and he had displayed negligent conduct.

8. Learned counsel for the petitioner has also referred to the Annexure No.1 of the supplementary affidavit that has been filed today, which is a copy of the civil appeal filed under Section 96 of the CPC against the judgment dated 18.5.2019 passed by the trial court. Learned counsel has contended that the aforesaid civil appeal was dismissed for non-prosecution on 30.9.2019 and for setting aside that order, an application 4C was filed by the defendant-appellant, which came to be allowed on 22.12.2021 subject to payment of cost of Rs.1000/-. However, due to unforeseen circumstances, the petitioner-defendant could not deposit the cost of Rs. 1000/- and, therefore, the appeal stood dismissed.

9. Learned counsel for the respondent has referred to the affidavit filed in support of the application under Order IX Rule 13 by the petitioner-defendant to contend that there is no explanation whatsoever by the petitioner as to why he could not attend the proceedings in the suit. It is stated that the only date that is mentioned in the application is 5.7.2018, when he could not attend. Learned counsel for the respondent has referred at length to the observations of the trial court to

contend that the rejection of the application under Order IX Rule 13 was justified under the circumstances of the case.

10. Learned counsel for the respondent further stated that the present petition has been filed by concealing material fact regarding the filing of the civil appeal before the court, including the fact that it was dismissed for non-prosecution and an interim order was obtained from this Court. It is further stated that in this petition, on the day of hearing, the fact regarding the filing of the civil appeal was sought to be brought on record through a supplementary affidavit. Learned counsel for the respondents has drawn attention to an affidavit filed along with objection, that the petitioner had been appearing repeatedly in various other cases before the district court but had not appeared in the instant case. Learned counsel has relied upon a judgment of the Supreme Court in the case of **State of Orissa and Another Vs. Laxmi Narayan Das (Dead) thr. LRs & others** passed in **Civil Appeal No.8072 of 2010** in support of its contention.

11. A perusal of the record of this petition reveals that Original Suit No. 796 of 2017 was filed in the court of the Civil Judge, Senior Division, Agra by the plaintiff-respondents seeking Rs. 20 lakh as compensation. The case set up in the plaint is essentially that the plaintiffs were defamed by the illegal acts of the petitioner-defendant. By a judgement and order dated 18.5.2019 the suit was decreed. It is noticed in the judgement that adequate opportunity was afforded to the defendant but he did not file a written statement and on 12.3.2018, the opportunity to file a written statement was closed. From perusal of the order-sheet it appears that an application 18C was filed by the plaintiff

under Order VIII Rule 10 CPC seeking the suit to be proceeded with in view of non-filing of the written statement by the defendant. The application 18C was allowed by means of an order dated 13.7.2018 by the trial court.

12. An application 20C was filed by the defendant seeking setting aside of the aforesaid order dated 13.7.2018. Thereafter, an objection was filed by the plaintiff. The application 20C came to be dismissed by the trial court by means of an order dated 1.10.2018. Thereafter, on 18.5.2019, the suit of the plaintiff-respondent was decreed.

13. On 1.7.2019, the defendant-petitioner filed an application 4C before the trial court under Order IX Rule 13, read with Section 151 CPC for setting aside the judgment and decree aforesaid. This was registered as Miscellaneous Case No. 234 of 2019. By an order dated 3.8.2022, the application 4C was rejected. Thereafter, a Miscellaneous Appeal No. 223 of 2022 was filed by the defendant-petitioner against the order dated 3.8.2022. By the order dated 12.9.2022, the application 5C filed by the defendant-petitioner in the Miscellaneous Appeal No. 223 of 2022 seeking stay of the execution case was considered and disposed of with a direction that till the date fixed, the execution case would not be finally disposed of. However, it was observed that in case the appellant (defendant-petitioner herein) attempts to delay the disposal of the appeal, the order would automatically come to an end. It appears that several dates were fixed in the matter and on 3.3.2023, the arguments of the counsel were heard. By a judgment and order dated 15.3.2023, the Miscellaneous Appeal No. 223 of 2022 was dismissed.

14. A perusal of the order dated 3.8.2022 passed by the trial court rejecting the application 4C filed under Order IX Rule 13 CPC reflects that the defendant-petitioner had filed a vakalatnama of his counsel in the suit on 30.11.2017 and thereafter the dates 22.12.2017, 7.2.2018 and 12.3.2018 were fixed. On 12.3.2018, in the absence of the defendant-petitioner, the opportunity to file a written statement was closed, whereafter, for disposal of the application 18C filed by the plaintiff under Order VIII Rule 10 CPC, 10.4.2018, 24.4.2018, 18.5.2018, 28.5.2018, 31.5.2018, 5.7.2018 dates were fixed. A copy of the application 18C was received by the defendant-petitioner on 10.4.2018, on which he asked for time to file a reply, whereafter application 18C was filed praying for proceeding with the case under Order VIII Rule 10 CPC. For filing objections to the application 18C, seven dates were fixed but the defendant-petitioner neither filed any objection nor did he appear before the court for making oral objections. Accordingly, the application 18C was allowed on 13.7.2018.

15. It was noted that thereafter the plaintiff filed an affidavit in evidence and the defendant was afforded opportunity to cross-examine the plaintiff-witness but since no one appeared on behalf of the defendant-petitioner to cross-examine the plaintiff-witness, the right to cross-examine was closed on 1.8.2018 and the matter was fixed for evidence of the defendant-petitioner and final hearing. Thereafter six dates were fixed for evidence of the defendant-petitioner and his arguments which falsified the case of the petitioner that no opportunity to cross examine the plaintiff's witness was afforded. It was stated that in the meanwhile on 8.8.2018, an application 20C was filed by the defendant-

petitioner under Order IX Rule 7 CPC for setting aside the aforesaid order dated 13.7.2018 which was dismissed on 1.10.2018 on the ground that on 13.7.2018 no such order was passed that would be covered by the provision of Order IX Rule 7 CPC. Thereafter between 17.10.2018 and 14.5.2019, sixteen dates were fixed for argument but no one participated on behalf of the defendant-petitioner in the suit nor was any application filed on his behalf for setting aside any order. Accordingly, the judgment and order dated 18.5.2019 was passed.

16. It was noted by the trial court that the conduct of the defendant-petitioner during the trial was to adopt delaying tactics and negligent and he did not avail of the opportunities that were repeatedly provided to him. It was noted that the defendant-petitioner stated that his son was suffering from a disease from 8.2.2018 to 15.4.2018 because of which he could not file the written statement in the original suit but the defendant-petitioner did not file any medical certificate in support of his submission.

17. It is further stated that in the original suit from 12.3.2018, on which date the opportunity to file a written statement was closed, till 18.5.2019 when the judgment was passed by the trial court, on most of the dates, the defendant-petitioner was absent and did not participate in the suit, which reflects his negligence in the matter and his absence too has not been explained. The trial court observed that Order IX Rule 13 CPC is for protecting the interest of those applicants who could not appear due to inevitable reasons and those reasons are so compelling that they do not reflect any slackness on part of the applicant. After appearing in the

suit, then to be absent and not participate in the suit continuously shows indifference and negligence on part of the applicant. It was, therefore, held that the defendant-petitioner has not been able to make out any case for setting aside the decree and, accordingly, the application 4C under Order IX Rule 13 CPC was dismissed.

18. The appellate court, which dismissed the miscellaneous civil appeal filed by the defendant-petitioner against the order dated 3.8.2022, noted the provisions of Order IX Rule 13 CPC and considered the record of the suit and found that no application was filed by the defendant-petitioner for granting opportunity to file a written statement prior to the order passed under Order VIII Rule 10 CPC by the trial court despite 9 to 10 dates being fixed prior to that order. The observation was that apart from moving the application 20C under Order IX Rule 7 CPC the plaintiff neither took any other proceeding nor did he actively participate in the suit. It was noted that the trial court in its order had well considered the case of defendant-petitioner and had noted the fact that he had completely failed to establish his case under Order IX Rule 13 CPC. Accordingly, the appeal was dismissed.

19. A perusal of the order-sheet of this petition reveals that the petition was dismissed on 26.7.2023 for non-prosecution and the interim order was vacated. Thereafter, on 25.8.2023, the petition was restored but on the objection made by learned counsel for the respondents that the petition was filed concealing material facts, the interim order was not extended. In the order dated 25.8.2023, the arguments of the counsel for the respondents was noted that against the judgment and order dated 18.5.2019 passed by the trial court, after the

application under Order IX Rule 13 CPC was filed, a regular first appeal was filed by the petitioner challenging *ex-parte* decree which first appeal came to be dismissed on an application filed by the defendant-petitioner praying for withdrawal of the appeal. It is noted that thereafter, the supplementary affidavit was filed on the date of final hearing, that is, on 26.9.2023. The case was finally heard on the consent of the counsel for the parties as the counsel for the respondents had stated that he does not wish to file any affidavit in reply to the petition.

20. The courts, while deciding the application 4C and the miscellaneous appeal filed by the defendant-petitioner, have considered the provisions of Order IX Rule 13 CPC and have noted the delaying and negligent conduct of the defendant-petitioner during pendency of the suit. The aspect of "sufficient cause" was also considered by the courts while dismissing the application 4C.

21. Thus, the arguments advanced by the learned counsel for the petitioner that without there being any evidence the court has recorded negligence and delaying conduct on part of the petitioner, is contradicted by the evidence considered by the courts. The aspect of filing of an appeal under Section 96 of the CPC by the petitioner challenging the *ex-parte* decree, was not mentioned at all in the petition. Only when the submissions of learned counsel for the respondents were considered on 25.8.2023 and the interim order granted earlier was not extended, the petitioner submitted the details of the appeal by way of a supplementary affidavit on 26.9.2023, when the petition was finally heard.

22. The orders impugned, under the facts and circumstances of the case, call for no interference. This petition is, accordingly, **dismissed**.

Order Date :- 17.11.2023

K.K.Tiwari

(Jayant Banerji, J.)