

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 8541 of 2023

Petitioner :- Ramshankar Gupta

Respondent :- Ramesh Singh And 3 Others

Counsel for Petitioner :- In Person

Hon'ble Jayant Banerji,J.

1. Heard Smt. Vandana Gupta, Power of Attorney Holder of the petitioner.
2. This petition has been filed seeking to challenge the order dated 29.3.2023 passed by the Civil Judge (Senior Division), Mainpuri in Original Suit No. 212 of 2018 (Ramesh Singh Vs. Smt. Reeta Gupta and others) on an application Paper No. 36C2, whereby, the application seeking exemption from paying the amount of cost directed in the order dated 15.2.2023 on the ground that the applicant does not have the financial capacity to pay the amount of cost, was rejected.
3. Also under challenge is an order dated 18.4.2023 in Civil Revision No. 21 of 2023 (Ram Shankar Gupta Vs. Ramesh Singh and others) passed by the District Judge, Mainpuri rejecting the revision against the order of the trial court dated 29.3.2023. Further under challenge is an order of the trial court dated 19.5.2023 refusing to accord him any further hearing in view of the repeated non-compliance of the order for deposit of cost.
4. It appears that Original Suit No. 212 of 2018 was filed by one Ramesh Singh against Reeta Gupta and two others seeking a decree of specific performance. An application under Order 1 Rule 10 read with Section 151 of the CPC (Paper No. 13C) was filed on behalf of the petitioner Ram Shankar Gupta and his mother Susheela Gupta seeking impleadment in the aforesaid suit. In this petition, it has been stated that the application 13C dated 12.12.2018 was dismissed for non-prosecution on 14.2.2019. Thereafter, an application dated 30.5.2019 was filed bearing Paper No. 23C2 for recalling of the order dated 14.2.2019 which was dismissed by an order dated 18.7.2019. Again an application dated 19.8.2019 was filed for recalling the order dated 18.7.2019. It is stated in paragraph no. 10 of the petition that on 15.11.2019, the application was allowed on cost of Rs. 100/- and for hearing of the application 23C2, a date was fixed. Again by an order dated 21.7.2022, the application 23C2 was rejected on the ground that it was not pressed. In paragraph no. 11 of the petition, it is stated that on 18.8.2022, against the order dated 21.7.2022, an application Paper No. 30C2 for recall of the order was filed which was allowed by the order dated 15.2.2023 on payment of cost of Rs. 800/- and a date was fixed for hearing of an application Paper No. 23C2.

5. In paragraph no. 12 of the petition, it is stated that in view of the non-availability of funds to deposit the amount of cost, on 10.3.2023, the petitioner filed application Paper No. 36C2 seeking remission of cost of Rs. 800/-. It is stated that the application was rejected by the impugned order dated 29.3.2023. Against that order of rejection, the revision was filed which was dismissed and thereafter on 19.5.2023, the opportunity of hearing to the petitioner was closed.

6. It is the contention on behalf of the petitioner that the plaintiff in the suit has filed a false case for specific performance without impleading the petitioner, who is a necessary party in the suit.

7. As is evident from perusal of the record of this petition, time and again opportunity has been afforded to the petitioner for hearing the application. However, on repeated occasions, the applications of the petitioner were dismissed for non-prosecution and where they were allowed with cost, the cost was not paid on the specious plea that the petitioner does not have funds to make payment of cost.

8. It is but to be noted that the power of attorney of the petitioner is a duly registered document, which appears from page no. 76 onwards to this petition, and he does have the funds to execute the power of attorney, to come before the High Court to file and pursue the petition and to incur the cost of the petition, but claims not have the fund to pay the cost as imposed by the trial court. Obviously, the trial court as well as the revisional court were justified in refusing the afford any further opportunity to the petitioner.

9. The petitioner has filed a supplementary affidavit enclosing copies of various documents which are alleged to be proof of his title to the suit property. These documents have no bearing in this petition in the facts and circumstances of the present case.

10. This petition is wholly misconceived and is, accordingly, **dismissed**.

11. Registrar (Compliance) is directed to send a copy of this order to the trial court/revisional court to their information within fifteen days from today.

Order Date :- 16.10.2023

A. V. Singh

(Jayant Banerji, J.)