

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 8398 of 2023

Petitioner :- Devendra

Respondent :- Braj Mohan Sharma And 6 Others

Counsel for Petitioner :- Neelabh Srivastava, Anurag Kumar Pandey

Hon'ble Jayant Banerji, J.

1. Heard learned counsel for the petitioner.

2. This petition has been filed seeking the following relief:

"a. Issue a suitable direction to the learned trial court to decide the recall application No. 04 of 2022 (Devendra Vs. Braj Mohan Sharma & others) arising out of Misc. Case No. 24 of 2020 (Devendra Vs. Braj Mohan Sharma and others) in Execution Case No. 06 of 2018 (Braj Mohan Sharma & others Vs. Rakesh Kumar Sharma) pending before learned Civil Judge (Senior Division)/Prescribed Authority, Hapur pending since 20.01.2023 within some stipulated period."

3. The contention of the learned counsel for the petitioner is that after the decree was put to execution, he has filed Case No. 24 of 2020 under Order 21 Rule 99 of the Code of Civil Procedure (CPC). It is stated that the aforesaid Misc. Case No. 24 of 2020 was dismissed for non-prosecution on 1.11.2022. It is stated that thereafter, an application under Order 9 Rule 9 read with section 151 CPC was filed on 20.1.2023 seeking setting aside/recall of the order dated 1.11.2022. The contention is that the application under Order 9 Rule 9 CPC is not being decided.

4. A perusal of the provisions of Order 21 Rule 106 CPC reveal that the application for setting aside the order passed exparte shall be filed within 30 days from the date of order or where, in case of an exparte order, the notice was not duly served, within 30 days from the date when the applicant had knowledge of the order.

5. Prima facie, the application does not appear to be filed within the time prescribed.

6. It needs no iteration that the provisions of the Limitation Act are not applicable as the time for filing an application is circumscribed under Order 21 Rule 106 CPC. Even otherwise, the application has been filed under Order 9 Rule 9 CPC and as such, no such application would lie where the suit is not pending. It is stated that Misc. Case No. 24 of 2020 has been filed during the

execution proceedings.

7. Under the circumstances, no interference is called for and this petition is **dismissed**.

8. Registrar (Compliance) is required to send a copy of this order to the court concerned within fifteen days.

Order Date :- 18.10.2023

sfa/

(Jayant Banerji, J)