

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 8863 of 2023

Petitioner :- Govindram Bhargav (Since Deceased) And 6 Others

Respondent :- Rakesh Kumar And 3 Others

Counsel for Petitioner :- Hemendra Gautam, Abhishek Kumar Shukla, Amit Kumar Kushwaha

Hon'ble Jayant Banerji, J.

1. Heard learned counsel for the petitioners.

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

"1. Issue an order or direction to set aside the impugned order dated 21.09.2022, passed by the learned Additional District Judge, Court No.7, Mathura in Misc. Case No. 01 of 2014, Govindram Bhargav (deceased) through legal heirs vs. Rakesh Kumar (Annexure No.3 to the writ petition)

2. Issue an order or direction commanding and directing the learned Additional District Judge, Court No.7, Mathura to condone the delay in filing the application under order -9 Rule-9 C.P.C. and to treat the aforesaid application well within time and decide the case on merit.

3. Issue any other order or direction as this Hon'ble Court may deem fit and Proper in the circumstances of the case to meet the ends of justice.

4. Award the Cost of this petition to the petitioners."

3. The Stamp Reporter has reported that this petition has been filed with delay of 234 days. The cause for delay stated to be mentioned in paragraph no. 11 of this petition is that Mukesh Kumar, petitioner no. 1/2 was doing Pairvi and on 04.05.2018, when came out of the house to do Pairvi of case, he suddenly fell ill and suffered from vomiting and loose motion and, as such, he could not do Pairvi of his case and could not present himself before the Court or inform his counsel, which fact has not been considered by the court while passing the order impugned.

4. A perusal of the order impugned dated 21.09.2022 reflects that in the application filed under Section 5 of Limitation Act, it was only stated that accompanying application under Order 9 Rule 9 CPC that the delay in filing the same be condoned. The court observed that no cause is reflected in the application for condoning the delay and, accordingly, the application under Section 5 of

Limitation Act, which accompanied the application under Order 9 Rule 9 CPC, was rejected.

5. I have perused the application filed under Section 5 of the Limitation Act and the application filed under Order 9 Rule 9 CPC, which have been collectively enclosed as Annexure-1 to this petition. The court, by the impugned order, has correctly observed that no reason whatsoever has been disclosed in the application filed under Section 5 of the Limitation Act for condoning the delay in filing the application under Order 9 Rule 9 CPC.

6. It is stated in the application under Order 9 Rule 9 CPC that the applicant was on bed-rest on doctor's advise till 30.12.2013 and when the case was taken up before the trial court on 11.07.2013, the counsel for the applicant was under the impression that plaintiff would be present in the court but he was not and, therefore, the case was dismissed for non-prosecution. It is stated in the application that when plaintiff recovered fully, he came to the court on 01.01.2014 and contacted his Advocate but since the Advocates were on strike, the file of case could not be perused and it could only be perused on 12.01.2014 which reflected that the case had been dismissed for non-prosecution on 11.07.2013.

7. It has nowhere been stated in the aforesaid application that when did the applicant/petitioner fell ill, neither has any document been enclosed as proof of his illness, that is to say, no medical prescription, receipt of medicines have been enclosed either along with aforesaid applications or in this petition. Even this case has been filed with a delay of 234 days and no specific reason has been disclosed for the delay.

8. No interference is called for in the order impugned and this petition is, accordingly, **dismissed**.

9. The Registrar (Compliance) is directed to send a copy of this order to the concerned Court within fifteen days, for record.

Order Date :- 16.11.2023

Ashish

(Jayant Banerji,J.)