

Court No. - 4

Case :- MATTERS UNDER ARTICLE 227 No. - 10640 of 2023

Petitioner :- Sompal And 5 Others

Respondent :- Sukhdev Singh And 3 Others

Counsel for Petitioner :- Jitendra Kumar,Prasoon Tomar

Hon'ble Prakash Padia,J.

1. The petitioners have preferred the present petition with the prayer to suspend the effect and operation of the judgement dated 29.03.2023 and decree dated 11.04.2023 passed in Original Suit No.307 of 1997 till the disposal of the Appeal No.47 of 2023 (Sompal and others Vs. Sukhdev Singh and others).

2. It is argued by learned counsel for the petitioners that against the judgement dated 29.03.2023 and decree dated 11.04.2023 passed in Original Suit No.307 of 1997, an appeal being Appeal No.47 of 2023 (Sompal and others Vs. Sukhdev Singh and others) has been filed by the petitioners. The aforesaid appeal was duly admitted by the Appellate Court vide order dated 30.04.2023 but no orders were passed on the application for grant of interim relief on account of which the petitioners are suffering from irreparable loss. It is argued that the next date fixed in the matter before the Appellate Court is 08.12.2023. It is argued that during the pendency of the appeal, execution proceedings have initiated by the respondents in which next date fixed is 12.12.2023 and prays that in case, the effect and operation of the aforesaid order will not stayed, the petitioner will suffer irreparable loss. In support of his arguments, learned counsel for the petitioner relied upon a judgment of the Supreme Court in the case of Mool Chand Yadav and another Vs. Raza Buland Sugar Co. Ltd. Rampur reported in (1982) 3 SCC 484 as well as the judgment passed by co-ordinate bench of this Court in the case of Bhagwan Shankar Bajpayee Vs. District Judge Kanpur Nagar and others reported in 2009 (1) ADJ 684. It is argued by learned counsel for the petitioner that once the Appellate Court admitted the appeal and issue a notice to the opposite parties and while a

statutory remedy of appeal is available and when the serious civil consequences follow from an order, it is imperative for the Appellate Court to suspend the operation of the order. Learned counsel for the petitioner relied upon paragraph Nos.2, 3 and 4 of the judgement of Bhagwan Shankar Bajpayee (supra) which are reproduced hereinbelow:-

"2. Having heard the learned counsel for the petitioner-defendant and having perused the record, this Court finds that where a statutory remedy of an appeal is available and where serious civil consequences follow from an order, it is imperative for the appellate Court to suspend the operation of the order.

3. In Mool Chand Yadav and another v. Raza Buland Sugar Co. Ltd. Rampur and others, 1983 AWC 121, the Supreme Court held that where orders are challenged in appeal which orders have serious civil consequences, the judicial approach required that during the pendency of the appeal, the operation of the order should be suspended more so when the appeal had been admitted.

4. In the present case, from a perusal of the order of the appellate Court dated 5.12.2008, it is clear that the appeal has been admitted. The decree of the trial Court holds that the alleged will is null and void. The order of the trial Court has serious civil consequences and therefore, the said order must be suspended. The Court finds that 3.1.2009 has been fixed by the appellate Court for the hearing on the stay application filed by the petitioner. Consequently, this writ petition is disposed of with the direction to the appellate authority to pass appropriate order on the stay application on 3.1.2009 positively. Till then the decree passed by the trial Court shall remain in abeyance. The appellate Court while passing the orders on the stay application will not be influenced by any observation made in this order. It is further directed that in the event the plaintiffs-opposite parties are aggrieved by this order, it would be open to the plaintiffs to move a recall application before this Court within three weeks."

3. Heard learned counsel for the petitioners and perused the record.

4. In the facts and circumstances of the case, the present petition is disposed of directing the Appellate Court to decide the interim injunction application most expeditiously and preferably on the next date fixed in the matter, i.e., 08.12.2023. In case, on the next date, the aforesaid interim relief application could not be decided, the same be decided within two weeks thereafter.

5. Till 7.01.2024 or on the date when the interim relief application would be decided, whichever is earlier, no coercive action be taken against the petitioner in respect of the execution proceedings.

Order Date :- 30.11.2023

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