

Neutral Citation No. - 2023:AHC:236740

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 10033 of 2023

Petitioner :- Harpreet Singh @ Sunny Bagga

Respondent :- Kaval Jeet Singh And Another

Counsel for Petitioner :- Vineet Singh Chandel

Counsel for Respondent :- Shiva Priya Prasad, Shiva Priya Prasad

Hon'ble Jayant Banerji, J.

1. Heard learned counsel for the petitioner and Shri Shiva Priya Prasad, learned counsel appearing for respondent No.1.
2. However, vakalatnama of Shri Shiva Priya Prasad, learned counsel is not on record. Office is directed to trace out the same and place it on record.
3. This petition has been filed challenging an order dated 1.9.2023 passed by the District Judge, Jaunpur, whereby the application under Section 5 of the Limitation Act filed along with an appeal under Section 6 of the Court-fees Act, 1870, was dismissed. Further under challenge is an order dated 27.4.2023 passed by the Civil Judge, Senior Division, Jaunpur in Original Suit No. 70 of 2022 (Harpreet Singh Versus Kaval Jeet Singh and another) whereby, while disposing of preliminary issue No. 3 as to the valuation of this suit, the trial court has assessed the suit to be undervalued and has directed payment of court fees in accordance with the finding recorded while deciding issue No.3.

4. It is the contention of the learned counsel for the petitioner that the suit was for seeking declaration and, therefore, the court fee payable was a sum of Rs. 200/-, which was duly paid, and the order of the trial court determining the stamp duty to be undervalued in terms of Section 7 (iv-A) of the Court-fees Act, 1870 (hereinafter referred to as 'Act, 1870'), is illegal. It is further contended that along with the appeal filed under Section 6 of the Act, 1870, an application under Section 5 of the Limitation Act was filed by the petitioner and the delay, if any, ought to have been condoned. In support of his contention, learned counsel for the petitioner has referred an order dated 17.5.2022 passed by the Supreme Court in the case of **Manager, Indusind Bank Limited and Another Vs. Sanjay Ghosh** (Civil Appeal No. 4104 of 2022).

5. Learned counsel for the respondent has opposed this petition.

6. Under Section 7 of the Act, 1870 (U.P. Amendment) for a declaratory decree with consequential relief, Clause (iv) provides the manner of computation of court fees, which reads as follows:

"For a declaratory decree with consequential relief.- (iv) In suits-

(a) to obtain a declaratory decree or order, where consequential relief other than reliefs specified in sub-section (iv-A) is prayed; and

For accounts.- (b) For accounts- according to the amount at which the relief sought is valued in the plaint or memorandum of appeal:

Provided that in suits falling under clause (a), where the relief sought is with reference to any immovable property, such amount shall be the value of the consequential relief and if such relief is incapable of valuation, then the value of the

immovable property computed in accordance with sub-section (v), (v-A) or (v-B) of this section as the case may be:

Provided further that in all suits falling under clause (a), such amount shall in no case be less than Rs. 300:

Provided also, that in suits falling under clause (b), such amount be the approximate sum due to the plaintiff and the said sum shall form the basis for calculating or determining the valuation of an appeal from a preliminary decree passed in the suit."

7. Clause (iv-A) of Section 7 of the Act, 1870 (U.P. Amendment) reads as follows:

"(iv-A) For cancellation or adjudging void instruments and decree- (iv-A) In suits for or involving cancellation of or adjudging void or voidable a decree for money or other property having a market value, or an instrument securing money or other property having such value:

(1) where the plaintiff or his predecessor-in-title was a party to the decree or the instrument, according to the value of the subject-matter, and

(2) where he or his predecessor-in-title was not a party to the decree or instrument, according to one-fifth of the value of the subject-matter, and such value shall be deemed to be-

if the whole decree or instrument is involved in the suit, the amount for which or value of the property in respect of which the decree was passed or the instrument executed, and if only a party of the decree or instrument is involved in the suit, the amount or value of the property to which such part relates.

Explanation.- The value of the property for the purposes of this sub-section shall be the market-value, which in the case of immovable property shall be deemed to be the value as computed in accordance with sub-sections (v), (v-A) or (v-B), as the case may be."

8. A perusal of the plaint that has been filed as Annexure No. 3 to this petition reflects that a suit seeking a decree for declaration has been filed for declaring sale deed dated 10.9.2021 and sale deed dated 15.9.2021 as illegal, ineffective, and void. Further, declaration was sought that the plaintiff be declared as owner in possession of the properties mentioned in Schedule अ and ब of the plaint. A

further relief of permanent injunction was also sought. Given the case of the petitioner, the declaration sought would not exclusively fall as a suit for declaratory decree but, in view of sub-clause (a) of clause (iv) of Section 7 of the Act, 1870, since the relief prayed is for adjudging an instrument as void, it would be covered under the exception made in sub-clause (a) of Clause (iv) of Section 7 of the Act, 1870 and, therefore, it would fall squarely under clause (iv-A) of Section 7 of the Act, 1870. As far as the order impugned dated 1.9.2023 is concerned, evident it is from the record that the order sought to be challenged was passed on 27.4.2023. The application filed by the petitioner under Section 5 of the Limitation Act has been enclosed at Page No. 69 of this petition which reads as follows:

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न्यायालय जनपद न्यायाधीश जौनपुर

प्रकीर्ण अपील संख्या सन् 2023

हरप्रीत सिंह बनाम कवलजीत सिंह

प्रार्थना पत्र दफा-5 कानून मियाद अधिनियम :-

श्रीमान जी,

सविनय निवेदन है कि अपील उपरोक्त आदेश दिनांक 27-04-2023 के विरुद्ध दाखिल किया है जिसे मंजूर होने की पूरी उम्मीद है। प्रार्थी आवश्यक कार्य से शहर बाम्बे चला गया था वहाँ काफी बीमार हो गया और दवा इलाज से कुछ स्वस्थ हुआ तो घर आया लेकिन पुनः गम्भीर रूप से बीमार हो गया इलाज के दौरान पता चला कि प्रार्थी लीवर रोग से परेशान है लिहाजा अस्वस्थ होने की वजह से कचेहरी नहीं आ सका। स्वस्थ होने पर कचेहरी आया तो अपील हाजा दाखिल कर रहा है। प्रार्थी ने जानबूझकर कोई देरी नहीं किया है। न्यायहित में देरी माफ करके अपील स्वीकार किया जाना आवश्यक है।

अतः श्रीमान जी से प्रार्थना है कि देरी माफ करके अपील हाजा की सुनवाई करने की कृपा करें ताकि न्याय हो।

प्रार्थी
हरप्रीत सिंह
अपीलान्ट

दिनांक 05.07.2023"

9. No details whatsoever have been given in this application. Further, a perusal of the impugned order passed by the District Judge reflects that some documents were filed regarding the purported ill health of the petitioner, which were doctor's prescriptions dated 11.7.2022 and 16.6.2023. The judge has observed that, on perusal of the application, it is not clear that on which date the plaintiff had gone to Mumbai and when had he returned. The plaintiff had filed no documents with regard to his treatment in Mumbai. The judge has noted that the order challenged was of 27.4.2023 and for not filing the appeal within time, in support of the contention of the petitioner, no documents has been filed. The delay has not been sufficiently explained, accordingly, the application was rejected.

10. It is evident that after the order dated 27.4.2023 was passed, the first doctor's prescription on record before the appellate court was of 16.6.2023, which is nearly two months after the order was passed. The time limit for filing an appeal under Article 116(b) of the Limitation Act is thirty days from the date of decree or order.

11. The order of the Supreme Court that has been referred to by the learned counsel for the petitioner has

observed that the question of limitation is not to be examined with a view to decline the condonation, but to do substantial justice. As far as the impugned order of 27.4.2023 is concerned, the learned counsel for the petitioner has not been able to point out any error in the order impugned that would merit consideration, particularly when a judgment of the Supreme Court in the case of **Shailendra Bhardwaj and Others vs. Chandra Pal and Another**, was relied by the trial court while deciding the issue No. 3.

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

Order Date :- 14.12.2023

K.K.Tiwari

(Jayant Banerji, J.)