

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 10090 of 2023

Petitioner :- Shiv Kumar Tiwari @ Chhandanlal

Respondent :- Ram Naresh Varma And 4 Others

Counsel for Petitioner :- Surendra Nath Shukla, Yogita Shukla

Hon'ble Jayant Banerji, J.

1. Heard Shri Surendra Nath Shukla, learned counsel for the petitioner.

2. This petition has been filed challenging an order dated 29.03.2022 passed by the Civil Judge (Junior Division) City, Farrukhabad in Original Suit No.262 of 2000 (Ram Naresh Vs. Shiv Kumar), whereby the application paper no.264A1 filed by the defendant-petitioner seeking return of the plaint to the plaintiff was dismissed. Further under challenge is the order dated 15.07.2023 passed by the Additional District & Sessions Judge/ Special Judge (E.C.) Act, Farrukhabad in Civil Revision No.14 of 2022, whereby the revision filed by the defendant-petitioner challenging the order of the trial court aforesaid dated 29.03.2022 has been dismissed. Further direction has been sought for allowing the application paper no.264-A filed by the defendant-petitioner and to dismiss the Original Suit No.262 of 2000 as withdrawn.

3. From the record, it appears that Original Suit No.262 of 2000 was filed by the plaintiff-respondent No.1 seeking a relief of permanent injunction in respect of an immovable property. In the aforesaid suit, an application paper no.28-A dated 29.07.2000 was filed on behalf of the plaintiff stating that the defendant is adamant in his efforts to anyhow alter the suit property and is threatening to demolish certain constructions of the plaintiff and is even threatening the plaintiff with his life. It was stated that since 30.07.2000 was a holiday, accordingly it was prayed that for hearing on the aspect of the temporary injunction, the date 31.07.2000 be fixed and only till that date, on the condition that the plaintiff would not seek adjournment on that date, the parties be directed to maintain status quo. In the alternative, it was prayed that in case it is not possible to pass an order for hearing the matter on 31.07.2000, then the plaint be returned to the plaintiff.

4. By an order dated 29.07.2000 passed on the application paper No.28-A, the trial court directed that status quo would be

maintained with regard to the suit property till 31.07.2000 and it was directed that the case be listed on 31.07.2000, for purpose of objection and disposal of the application 6C.

5. Thereafter, the application 264-A1 dated 14.8.2015 was filed by the petitioner-defendant stating that the afore-mentioned application 28A1 dated 29.07.2000 was filed by the plaintiff for withdrawal of the suit, which came to the knowledge of the defendant later, and therefore, in the interest of justice, the plaint be returned to the plaintiff. By the impugned order of 29.03.2022, the application 264A1 was rejected by the trial court and the revisional court rejected the revision filed by the defendant-petitioner by the impugned order dated 15.07.2023.

6. The contention of the learned counsel for the petitioner is that once a withdrawal application had been filed, the court is bound to pass an order for withdrawal of the plaint and the courts have erred in rejecting the application for 264A1 of the petitioner. In support of his contention, learned counsel for the petitioner has relied upon a judgment of this Court in **Prakash Chandra Mishra and another Vs. Rajendra Prasad Gupta and others**, reported in **2004 (2) AWC 1673**.

7. A perusal of the judgment in Prakash Chandra Mishra reflects that in a suit filed for permanent injunction, the plaintiff therein moved an application for withdrawal of the suit. Before the order could be passed by the Court on the application to withdraw the suit, another application was filed by the plaintiff for withdrawing the application of withdrawal of the suit. The Court referred to a Division Bench judgment of this Court in **Smt. Raisa Sultana Begum and others Vs. Abdul Qadir and others**, reported in **AIR 1966 All 318** and relied upon a judgment of this Court in **Upendra Kumar and others Vs. District Judge and others**, reported in **1997(2) AWC 1301** and observed that in the facts of that case, the case was one of abandonment of suit and it was complete as soon as the application was filed. It was further noticed that the contention that the withdrawal was a conditional one, had no merit because the averments made in the application for withdrawal was not conditional.

8. This judgment in **Prakash Chandra Mishra** (supra) is not applicable in the facts and circumstances of the present case. As a matter of fact, it is in aid of the case of the plaintiff.

9. As noticed above, the application 28A1 dated 29.07.2000, was filed seeking an ad interim injunction of status quo till the next

date of listing and, in the alternative it was prayed that if it was not possible to fix the next date, then the plaint be returned.

10. The prayer for withdrawal made in the application 28-A, in the present case, was clearly conditional and not a case of abandonment. The courts have, therefore, rightly observed that the application 264A1 deserves to be rejected and it was rejected accordingly. No interference is required in this petition. It is, therefore, **dismissed**.

Order Date :- 24.11.2023
SFH