

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 10935 of 2023

Petitioner :- Smt. Geeta Devi And Another

Respondent :- Nirmal Singh And Another

Counsel for Petitioner :- Alok Kumar Srivastava, Shweta Srivastava

Hon'ble Ashutosh Srivastava, J.

1. Heard Sri Alok Kumar Srivastava, learned counsel for the petitioners.
2. Considering the nature of the order that is proposed to be passed by this Court, notices to the private respondents is being dispensed with.
3. The present petition under Article 227 of the Constitution of India has been filed for expeditious disposal of Original Suit No. 2397 of 2022 (Smt. Geeta Devi and another vs. Nirmal Singh and another).
4. Learned counsel for the petitioners submits that the petitioners are senior citizens and have instituted the suit in question for declaration under Section 34 of the Specific Relief Act. He submits that notices were issued to the defendants-respondents, however, they failed to put in appearance in the proceedings. The court concerned has, vide order dated 28.07.2023, directed the suit to be proceeded ex parte. Thereafter, the matter was being fixed for ex parte hearing. However, the defendants put in appearance on 06.10.23 and have filed an application under Order 9 Rule 3 C.P.C. read with Section 151 C.P.C. seeking to recall the order dated 28.07.2023, by which the suit has been ordered to be proceeded ex parte. Learned counsel for the petitioners submits that said order to proceed ex parte has since been recalled and the case is pending for filing of the written statement. It is further submitted that the defendants are deliberately delaying the disposal of the suit and the petitioners, being senior citizens, are adversely being affected on account of pendency of the suit. He submits that in such circumstances a direction for expeditious disposal of suit proceedings may be issued.
5. Learned counsel for the petitioners in order to buttress his

submissions has invited attention of this Court to the order-sheet of the suit proceedings, which have been brought on record as Annexure No. 2 to the writ petition, which reveals that the suit was initially directed to proceed ex parte. However, learned counsel for the petitioners submits that the said order has now been recalled and the matter is being fixed for filing of the written statement.

6. Considering the fact that the petitioners are senior citizens, this Court is of the opinion that instead of expediting the proceedings of the entire Suit which is only of the year 2022, the petition can be disposed of by requiring the Additional Civil Judge (J.D.) Court No. 5, Kanpur Nagar to invite the written statement from the defendants, who have already put in appearance, within a time frame of three months from today. In case the written statement is not filed within the aforesaid time frame, the learned Civil Judge may proceed ex parte against the defendants. In the event written statement is filed within the time allowed, it is expected from the learned Civil Judge that he shall proceed to frame issues and invite evidence from the parties in furtherance of the proceedings of the Suit. It is expected that the learned Civil Judge shall abide the directions of this Court and not grant any unnecessary adjournment to either of the parties.

7. With the aforesaid observations, the present writ petition is disposed of.

Order Date :- 6.12.2023

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