Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 10942 of 2023

Petitioner :- Rakesh Kumar Singh
Respondent :- Kiran Devi And Another
Counsel for Petitioner :- Dhananjay Kumar Mishra

Hon'ble Ashutosh Srivastava,J.

1. Heard Shri Dhananjay Kumar Mishra, learned counsel for the petitioner.

2. Considering the nature of the order that is proposed to be passed by this Court, notice upon private respondents is being dispensed with.

3. The present petition under Article 227 of the Constitution of India has been filed with limited prayer for the direction to the Civil Judge (Junior Division) Shahganj, Jaunpur to expedite the proceeding of the recall application dated 28.11.2022, registered as Misc. Suit No. 228 of 2022 (Rakesh Kumar Singh vs. Kiran Devi and another) in O.S. No. 1187 of 2016 within a time frame fixed by the Court.

4. Learned counsel for the petitioner submits that the suit bearing no. 1187 of 2016 was filed with a prayer for cancellation of the will deed dated 02.11.2013. The said suit was proceeding on regular pace. However, vide order dated 18.05.2022, the suit was dismissed for non appearance of the plaintiff -petitioner. A restoration application was filed on 28.11.2022 which is stated to be pending.

5. Learned counsel for the petitioner submits that the service upon the respondents on the restoration application has been held to be sufficient and dates are being fixed for consideration of the said restoration application. However, no order has yet been passed. Learned counsel for the petitioner submits that the purpose of filing the present petition would stand served, if, appropriate direction is issued for expeditious disposal of the pending recall application dated 28.11.2022.

6. I have heard learned counsel for the petitioner and have perused the record.

7. From the order-sheet of the proceedings, which have been brought on record as Annexure no. 4, it is borne out that the service upon the defendant have been held to be sufficient byway of publication, and thereafter, dates are being fixed for consideration of the recall application.

8. Considering the totality of the circumstances, this Court is of the opinion that the petition can be disposed off by directing the learned Civil Judge (Junior Division) Shahganj, Jaunpur to expedite the hearing of the recall application dated 28.11.2022. Accordingly, the writ petition is disposed off by requiring the Civil Judge (Junior Division) Shahganj, Jaunpur seized with the recall application dated 28.11.2022 registered as Misc. Suit No. 228 of 2022 (Rakesh Kumar Singh vs. Kiran Devi and another) in O.S. No. 1187 of 2016 to consider and pass appropriate order expeditiously preferably within a period of two months from the date of service of certified copy of order of this Court, in accordance with law.

Order Date :- 6.12.2023
Bhanu

Digitally signed by :-
BHANU PRATAP KUSHWAHA
High Court of Judicature at Allahabad