

Court No. - 4

Case :- MATTERS UNDER ARTICLE 227 No. - 11156 of 2023

Petitioner :- Ved Prakash Singh

Respondent :- Prathma Bank Now Prathama U.P. Gramin Bank

Counsel for Petitioner :- Ashish Agrawal

Counsel for Respondent :- Sachin Mishra

Hon'ble Prakash Padia,J.

1. Heard Sri Ashish Agrawal, learned counsel for the petitioner and Sri Sachin Mishra, learned counsel for the respondent-Bank.

2. The petitioner has preferred the present petition challenging the order dated 28.07.2023 passed by the Additional District Judge Court No.2, Moradabad in Misc. Case No.20 of 2023 arising out of Misc.Case No.279 of 2017 in Execution Case No.9 of 2008 (Prathama Bank Vs. Ved Prakash Singh).

3. It is argued by learned counsel for the petitioner that after the execution case No.9 of 2008 (Prathama Bank Vs. Ved Prakash Singh) was dismissed for want of prosecution on 31.01.2017, a restoration/recall application has been filed on 16.03.2017 which was registered as Misc. Case No.279 of 2017. Since steps were not taken to serve the defendants, the aforesaid Misc. Case was dismissed on 06.09.2019. It is argued that after expiry of almost three years another application along with delay condonation application, supported by an affidavit, was filed to recall the order dated 06.09.2019. It is argued that without considering the matter in right perspective, the Court below wholly illegally condoned the delay. It is argued that the order impugned is a non-speaking order and the Court below cannot condone the delay by using its inherent power. In support of his arguments, he relied upon paragraph 13 of the judgement of Hon'ble Supreme Court passed in the case of Damodaran Pillai and others Vs. South Indian Bank Ltd. reported in 2005 (6) SCC 178. The paragraph 13 of the aforesaid judgement is reproduced hereinbelow:-

"It is also trite that the civil court in absence of any express power cannot condone the delay. For the purpose of condonation of delay in absence of applicability of the provisions of Section 5 of the Limitation Act, the court cannot invoke its inherent power."

4. On the other hand, it is argued by learned counsel for the respondent that orders passed by the Court below is absolutely perfect and valid order and does not call for any interference by this Court especially under Article 227 of the Constitution of India. Insofar as the argument that order is non-speaking order, It is admitted by learned counsel for the respondent that the order is a non-speaking order.

5. In this view of the matter and with the consent of learned counsel for the parties, the order dated 28.07.2023 passed by the Additional District Judge Court No.2, Moradabad in Misc. Case No.20 of 2023 is liable to be quashed and the same is hereby quashed.

6. The Court below is free to pass fresh order strictly in accordance with law, if so advice.

Order Date :- 5.12.2023
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