

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 11692 of 2023

Petitioner :- The Free Will Baptist Church Of India And Another

Respondent :- The Diocese Of Agra And Another

Counsel for Petitioner :- Sandeep Maniji Bakhshi

Counsel for Respondent :- Santosh Yadav

Hon'ble Ashutosh Srivastava,J.

Supplementary affidavit filed by the petitioners is taken on record.

Heard Sri Sandeep Maniji Bakshi, learned counsel for the petitioners and Sri Sanjeev Singh along with Sri Santosh Yadav, Advocates, learned counsel for the Caveator/ Respondents.

The instant petition under Article 227 of the Constitution of India has been filed for setting aside the order dated 07.10.2023, passed by the Civil Judge (Senior Division)/SCC Judge, Bareilly, in Original Suit No. 647 of 2020. By the order dated 07.10.2023, the interim injunction Application (Paper No. 6-C) filed by the plaintiff/ respondents has been allowed, the Application (Paper No. 28-C) filed by the Defendant/Petitioners under Section 151 CPC restraining the plaintiffs from interfering in the peaceful possession of the defendants over the suit property has been rejected and the Defendant/ petitioners, their followers, Moderator, Congregation employees, Agents, Servants, etc. have been restrained by interim injunction from interfering in the peaceful possession of the Christ Church situate at Bareilly Cantt., near Bareilly Club, Bareilly.

At the very outset, a preliminary objection as to the maintainability of the petition under Article 227 of the Constitution of India has been raised by Sri Sanjeev Singh, learned counsel for the Caveator respondents, on the ground of availability of statutory remedy to file a Misc. Appeal assailing the order dated 07.10.2023 under Order 43 Rule 1 (r) CPC. Reliance has been placed upon the decision of the Apex Court rendered in the case of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Ors. Vs. Tuticorin Educational Society and Ors.*** reported in **2019 (9) SCC 538 (Manu/SC/1365/2019)** to submit that when a remedy of appeal is provided under the Code of Civil Procedure 1908 the aggrieved party ought to take recourse to it. Learned counsel for the respondents further submits that in fact the petitioners have already availed the remedy of Appeal before the learned District Judge, Bareilly, and have also filed an application under Order 41 Rule 5 CPC for grant of interim relief as is evident from the Supplementary Affidavit filed by the petitioners by which the Memo of the Misc. Appeal has been annexed as Annexure-3. Learned counsel for the respondents in such circumstances submits that the

petition be rejected at the threshold.

Per contra, learned counsel for the petitioners submits that in the present petition under Article 227 of the Constitution of India was filed prior to filing of the Misc. Appeal under Order 43 Rule 1 (r) CPC on 02.11.2023. The defects, reported by the Stamp Reporter, were removed and a copy of the petition was served upon counsel for the respondents on 08.11.2023 and presented before the Court on 09.11.2023 and came up before the Court only on 04.12.2023.

As regard the preliminary objection of the respondents, learned counsel for the petitioners submits that the rule of exclusion of the writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of an alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies i.e. enforcement of any fundamental rights, there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of the act is challenged. Reliance is placed upon the decisions of the Apex Court reported in 2003 (2) SCC 107 and 1998 (8) SCC 11.

Learned counsel for the petitioners submits that the Misc. Appeal of the petitioners has been fixed for 12.12.2023. The plaintiff/ respondents under the garb of the order dated 07.10.2023 are bent upon to evict the petitioners from the suit property. The plaintiff/respondents have also impressed upon the City Magistrate Bareilly, to pass an order on 02.12.2023 under Section 111 Cr.P.C. He further submits that the instant petition be disposed of with the direction to the Appellate Court seized with the Stay Application under Order 41 Rule 5 CPC filed along with the Memo of the Misc. Appeal to pass orders thereon on the date fixed and till disposal of the Stay application direct parties to maintain status quo.

In the above backdrop this Court has been called upon to decide as to whether the petition under Article 227 of the Constitution of India would be maintainable in the wake of availability of an alternative remedy under Order 43 Rule 1 (r) which has already been availed off by the petitioner as also as to whether the direction for consideration of the Stay Application filed along with the Memo of the Appeal on the date fixed and directing the parties to maintain status quo till disposal of the said Application can be ordered.

The Apex Court in ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai's Case*** (supra) has observed as under:

12. Secondly, the High Court ought to have seen that when a remedy of appeal under section 104 (1)(i) read with Order XLIII, Rule 1 (r) of the Code of Civil Procedure, 1908, was directly available, the respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In *A. Venkatasubbiah Naidu Vs. S. Chellappan & Ors.* 1, this Court held that “though no hurdle can be put against the exercise of the Constitutional powers of the High Court, it is a well

recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a Constitutional remedy”.

13. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasijudicial authorities and tribunals. In respect of cases falling 1 (2000) 7 SCC 695 under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High court. This is why, a 3 member Bench of this court, while overruling the decision in Surya Dev Rai vs. Ram Chander Rai, pointed out in Radhey Shyam Vs. Chhabi Nath³ that “orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts.

14. Therefore wherever the proceedings are under the code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and 2 (2003) 6 SCC 675 3 (2015) 5 SCC 423 prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.

In the wake of the above, this Court finds no hesitation to hold that the present petition in the present form is clearly not maintainable and is **dismissed** as such. Since the petition has been dismissed no direction as prayed for can be granted.

Order Date :- 6.12.2023

Deepak/