

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 11656 of 2023

Petitioner :- Durgesh Kumar Jaiswal

Respondent :- Sanjeet Kumar Jaiswal And 2 Others

Counsel for Petitioner :- Sunil Kumar Singh, Amit Kumar Pandey, Jaya Tripathi

Hon'ble Ashutosh Srivastava, J.

Heard Shri Sunil Kumar Singh, learned counsel for the petitioner.

Considering the nature of the order that is proposed to be passed the notice upon the respondents is dispensed with.

The present petition, under Article 227 of the Constitution of India has been filed with the limited prayer for issuance of a direction to the Civil Judge (Senior Division) Mahrajganj, to decide the application moved by the defendant/ petitioner, under Section 151 CPC dated 22.03.2022, registered as paper No. 53-C within a time frame fixed by this Court.

Learned counsel for the petitioner submits that the dispute is between the brothers regarding shop in question. A suit has been instituted by the plaintiff/respondents for injunction. The trial Court under its order dated 20.10.2022, while considering the application for interim injunction, granted status quo to be maintained by the parties. It is contended by the learned counsel for the petitioner that under the garb of the status quo order the plaintiffs are not permitting the petitioner to carry on his business and at the same time they themselves are continuing with their business activities. Being compelled by the aforesaid situation, the petitioner approached this Court at earlier point of time by filing a petition under Article 227 of the Constitution of India being petition No. 1685 of 2023, which has been disposed of vide order dated 21.02.2023, which order has been brought on record as annexure no. 4 to the petition, observing that the status quo order is to be interpreted with regard to possession and nature of the property and not for restraining the party, already in possession, from running the business in his shop. The petitioner was accordingly relegated for filing Appeal under Order XLIII Rule 1r of the Code of Civil Procedure against the order of status quo.

Learned counsel for the petitioner submits that the Appeal as directed by the Court could not be filed since the petitioner himself has consented for the status quo order. However, he has filed an application under Section 151 CPC, seeking certain directions from the Court concerned, and for clarification of the order. He submits that the said application is pending consideration and the purpose of filing present petition stand served if appropriate direction is issued to the Court concerned to pass orders on the pending application of the petitioner under Section 151 CPC, registered as Paper No. 53-C, within a time frame fixed by this Court.

In order to buttress his submissions the learned counsel for the petitioner has invited the attention of this Court to the order sheet of the proceedings, filed along with the petitioner as Annexure 7, which demonstrate that the application under Section 151 CPC, paper no. 53-C, is pending consideration and the same was directed to be decided on the date fixed by order dated 23.03.2023. Thereafter several dates have been fixed but the said application has not been considered and consequently the petitioner is being deprived off from carrying on his business.

Having heard learned counsel for the petitioner and having perused the record this Court is of the opinion that no useful purpose would be served by keeping the writ petition pending and the same is accordingly ***disposed of*** by requiring the Civil Judge (Senior Division) Mahrajganj, seized with the application of the petitioner, under Section 151 CPC dated 22.03.2021, registered as paper No. 53-C to take up the said application and pass appropriate order within a period of one month from the date of service of certified copy of order of this Court, strictly in accordance with law.

Order Date :- 2.12.2023

Deepak/