

**Court No. - 44**

**Case :-** MATTERS UNDER ARTICLE 227 No. - 12168 of 2023

**Petitioner :-** Vinod Prakash

**Respondent :-** Abdul Sattar Ansari And 25 Others

**Counsel for Petitioner :-** Dinesh Kumar Singh

**Hon'ble Ashutosh Srivastava,J.**

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

Considering the nature of the order that is proposed to be passed notice upon the respondent nos. 1 to 26 is being dispensed with.

Present petition, under Article 227 of the constitution of India, has been filed for a direction to the Additional Civil Judge (Junior Division) Court No. 6, Varanasi, to decide paper No. 76-C, filed by the petitioner, defendant no. 16 IInd Set, in Original Suit No. 311 of 2001 (Abdul Sattar Ansari and others Vs. Bansh Narayan and others), within stipulated period fixed by this Court.

It is contended by the learned counsel for the petitioner that the petitioner is a proforma defendant no. 16, defendant 2nd set, in the suit instituted by the plaintiffs 1 to 6, for the relief of permanent injunction against the defendants/respondents (Ist set).The defendants IInd set, in the said Suit, including the petitioner herein, have been impleaded as proforma respondent IInd set. However, no relief has been claimed against the defendant IInd set, including the petitioner.

Learned counsel for the petitioner submits that though the petitioner had put in appearance in the said suit but since no relief was claimed against him, he is not contesting the same. He submits that the trial Court on the interim injunction application, passed an order dated 17.08.2001, wherein, 6-C application was allowed and the parties to the suit were directed to maintain status-quo. The petitioner was not aware of passing of the said order and when in the year 2023 the petitioner proceeded to undertake some construction activities, in respect of his own property, the plaintiffs of the said suit, prevented him from doing so by asserting that there was status-quo order operating against the petitioner.

Learned counsel for the petitioner has invited attention of this Court to the plaint of the Suit, which has been brought on record as Annexure no. 1 to the petition, and the reliefs claimed therein, which shows that the reliefs has been sought against the defendants Ist Set and no relief has been claimed against the defendants (second set including the petitioner). However, in the injunction order dated 17.08.2001, the same has been made operative upon all the parties to the suit. On coming to know about the interim injunction order the petitioner has moved an application on 03.01.2023, seeking correction in the interim injunction order 17.08.2001, which application has been registered as Paper No. 76-C. The Court concerned has invited objections to the said application, Paper No. 76-C, vide order dated 17.04.2023 and the date are being fixed for disposal of the said application.

Learned counsel for the petitioner submits that as many as 8 to 9 dates have been fixed for consideration of the said application. However, no orders have been passed thereon. He submits that on account of the injunction, operating against him, he is unable to carry out construction in his house property which is not the subject matter of the Suit but on account of the status-quo order, passed in the suit, which has been made operative even upon him, he is unable to take any construction activity. He submits that the appropriate direction be issued to the Court concerned, seized with the application paper No. 76-C, to decide the same on the next date fixed in the matter or within the time frame fixed by this Court.

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

From the relief claimed in the plaint it is more than apparent that no relief against the defendants 2nd set, including the petitioner herein, has been sought. However, the order dated 17.08.2001, by means of which the 6-C application has been disposed of injuncting the parties to the suit, defendants IInd Set including the petitioner, against whom no relief has been claimed.

In the opinion of the Court, once the plaintiffs themselves have not claimed any relief against the petitioner/ defendants IInd set, the petitioner and the defendants IInd set are not liable to be injuncted.

The Court finds substance in the submission advanced by the learned counsel for the petitioner, his application, paper No. 76-C, is liable to be considered at the earliest. Accordingly, the present petition is **disposed off** by requiring the Additional Civil Judge (Junior Division) Court No. 6, Varanasi, seized with the

Application registered as Paper No. 76-C, filed by the petitioner, in Original Suit No. 311 of 2001 (Abdul Sattar Ansari and others Vs. Bansh Narayan and others), to consider and decide the same on the next date fixed or within three weeks from the date fixed, strictly in accordance with law.

The petitioner shall serve a certified copy of this order upon the Additional Civil Judge (Junior Division) Court No. 6, Varanasi, and it is expected from the Additional Civil Judge (Junior Division) Court No. 6, Varanasi, to dispose of the 76-C Application, within the time frame fixed by this Court.

**Order Date :- 30.11.2023**

Deepak/