

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 12056 of 2023

Petitioner :- Manav Sewa Sangh

Respondent :- Rajdev Singh

Counsel for Petitioner :- Ujjawal Satsangi

Hon'ble Ashutosh Srivastava,J.

Heard Shri Ujjawal Satsangi, learned counsel for the petitioner.

Considering the nature of the order that is proposed to be passed, the service of notice upon respondent is being dispensed with.

The present petition under Article 227 of the Constitution of India has been filed for a direction to the learned Court of Small Causes, Varanasi to expedite the disposal of the Original Suit No. 518 of 2021 (Manav Sewa Sangh and another versus Rajdev Singh) within a period of two months.

It is the case of the petitioner that it is a Charitable Society working for humanitarian and societal causes and is registered under the Societies Registration Act, 1860. The petitioner purchased a property situate at Plot No. 3 and 4, Chandrika Nagar, Sagra, Varanasi and constructed a house "Vishanti Bhawan" thereupon. The house bears the Municipal No. D59/105C 3-4, Chandrika Nagar, Sagra, Varanasi. The petitioner appointed the respondent herein as a Watchman and permitted him to occupy one of the quarters located on the eastern end of the property. The petitioner also permitted him to open a general merchant shop in the quarter for extra income and also permitted the family of the respondent to reside in the quarter. The respondent taking advantage of his occupation over the property began to assert his rights over other portions of the property and also obtained an exparte injunction against the petitioner on the strength of certain forged and fabricated documents by filing a frivolous suit being, Suit No. 214 of 2019. The petitioner has since removed the respondent from service as Watchman and required him to vacate the premises. On the refusal of the respondent, the petitioner has been compelled to institute Original Suit No. 518 of 2021 for eviction of the respondent.

Learned counsel for the petitioner submits that the suit was instituted on 2.7.2021. The respondent was avoiding service and not appearing in the suit. Service was deemed sufficient vide order dated 17.12.2021 and the case was directed to proceed exparte vide order dated 2.3.2022 and fixed for exparte evidence. The said order was subsequently recalled and the respondent was required to file written statement. The respondent has filed written statement in which title of the petitioner

over the suit property has not been denied but the issues have not been framed on account of the delaying tactics of the respondent. The petitioner in contrast has been vigilant and is prosecuting the case with all eagerness and zeal. It is contended that the respondent may not be permitted to manipulate the law by his delaying tactics and in such circumstances, submits that appropriate directions be issued for expeditious disposal of the proceedings of the suit.

This Court has considered the submissions of the learned counsel for the petitioner and has perused the records.

From the perusal of the order sheet of the proceedings brought on record as Annexure-4 to the petition, it is borne out that the suit is pending at the stage of acceptance of the written statements. The issues are yet to be framed. An application to accept the written statement on record has been filed which is to be considered.

The Division Bench of this Court in case of ***Ali Shad Usmani vs. Ali Isteba, 2015 (2) ADJ 250 (DB)*** has held that no direction can be issued to the sub-ordinate courts for deciding the suit within stipulated period. Relevant portion of the judgment is extracted hereunder:-

"We are not inclined to issue a direction for the expeditious hearing of a Civil Suit which is pending before the Civil Judge (Junior Division), District-Azamgarh. It would be most inappropriate to Court to entertain a writ petition under Article 226 and/or under Article 227 of the Constitution simply for the purpose of expediting the hearing of a suit. Such orders, if granted, place a class of litigants, who move the court in a separate and preferential category whereas other cases which may be of similar or greater antiquity and urgency are left to be decided in the normal channel. Hence, any such direction may be issued with the greatest care and circumspection by the High Court otherwise the Civil Courts will be overburdened only with requests for expeditious disposal of suits, which have been expedited by the High Court. Most of the litigants cannot afford the expense of moving the High court and would not, therefore, be in a position to have the benefit of such an order.

Ultimately, it must be left to the judicious exercise of discretion of the concerned Court to determine whether a ground for urgency has been made out. We emphasize that there may be other cases such as involving senior citizens, those who are differently abled or people suffering from a particular disability socio-economic or otherwise which may prime cause of urgent disposal. It is for the learned Trial Judge in each case to apply his or her mind and decide whether the hearing of the suit to be expedited.

For these reasons, we are not inclined to entertain the petition. The petition is, accordingly, dismissed. There shall be no order as to cost."

An earlier Division Bench of this Court in the Case of ***Km. Shobha Bose V. Judge Small Causes & Ors. reported in 2011 (88) ALR 850***, has held that the power to direct expeditious disposal of Suit or any other Cases should be exercised sparingly in extra ordinary circumstances and not in a routine manner. Relevant portion of the

judgment is extracted hereunder:-

"3. The prayer made in this petition for expeditious disposal of the suit/revision, in sum and substance, is nothing but a prayer for out of turn hearing of the suit. We are unaware of the docket of the Judge, Small Causes Court in seisin of the matter. We also do not know that suits of earlier years in which old ladies figure, are pending or not. However, it is common knowledge that thousands of cases instituted earlier by persons more aged than the petitioner are unfortunately pending in the Court. It is systemic delay. It is further common knowledge that direction of the nature, if granted, affects the working of the Court and the Judges, in seisin of such cases, remain ordinarily occupied with only those cases in which directions have been given for expeditious disposal and cases filed earlier gets ignored as those litigating from earlier years have no resources to approach this Court seeking expeditious disposal of the matter. It is further common knowledge that many of the Judges, because of sheer number of such directions, are unable to carry out these directions and subjected to contempt proceedings and even personally directed to appear in such proceedings. Such a prayer made in routine manner can not be granted without serious application of mind. It is high time that we must give serious thought to all these considerations before passing any order for expeditious disposal. We are not oblivious of the fact that this Court does possess power to direct early disposal of the case but as often said more the power greater the responsibility. We are of the opinion that power to direct expeditious disposal of suit or for that matter any lis which, in sum and substance, means out of turn disposal is to be exercised sparingly in extraordinary circumstances and not in a routine manner. It is fit to be exercised only when the Court comes to the conclusion that delay would cause gross injustice. However, while deciding this issue, the Court would bear in mind that it does not cause injustice to other litigants, who are waiting for justice from before because the very nature of order delays cases filed earlier. It causes resentment and dissatisfaction to those who are waiting for justice from before. It should be exercised only when it comes to the notice of this Court that Judge in seisin of the case is purposely avoiding to dispose of the suit for any oblique motive, which may defeat the justice. An order for expeditious disposal in a routine manner can not be countenanced.

4. We hasten to add that even in such kind of cases, ordinarily this Court would relegate the petitioner to the remedy before the Court in seisin of the lis to take appropriate decision, as it is that Court which can consider the matter in totality of the circumstances."

In view of the above, this Court is not inclined to grant the relief, as prayed for, at this stage.

With the above observations, the present petition is disposed of finally with liberty to the petitioner to move an appropriate application for expeditious disposal of the aforesaid pending case before the Court concerned and in case such an application is moved, the Court concerned shall pass appropriate orders within reasonable time.

Order Date :- 28.11.2023

Ravi Prakash

(Ashutosh Srivastava, J.)