

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 12239 of 2023

Petitioner :- Shree Prakash Tiwari

Respondent :- Shyam Bihari Tiwari And 4 Others

Counsel for Petitioner :- Pranab Kumar Ganguli, Ashutosh Ganguli

Hon'ble Ashutosh Srivastava, J.

Heard Sri Pranab Kumar Ganguli, learned counsel for the petitioner.

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

The present petition, under Article 227 of the Constitution of India, has been filed seeking direction to the Judge, Small Cause Court, Varanasi, to expedite the 6-C application of the plaintiff-petitioner filed in Original Suit No.135 of 2022 (Shree Prakash Tiwari vs. Shyam Bihari Tiwari and others).

Learned counsel for the petitioner submits that suit in question has been instituted on 26.4.2022 for declaration and injunction. The defendants have put in their appearance in the proceedings, however, they have neither filed their written statements nor objections to the interim injunction application. He further submits that dates are being fixed for consideration of the interim injunction application, however, no orders are being passed thereon. He next submits that on account of non-consideration of the 6-C application, there is an imminent threat of dispossessing the petitioner and also disconnecting the electric supply with an intent to disrupt the petitioner in carrying on his business in the suit premises. He further submits that purpose of filing the present petition would stand served if appropriate direction is issued to the Judge Small Cause Court Varanasi, seized with the interim injunction application to consider and pass appropriate orders on the pending interim injunction application (6-C) within a time frame fixed by this Court.

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

From the record of the proceedings, which have been brought on record as Annexure-3 to the petition, it is apparent that by order dated 26.4.2022, the court concerned had issued notices to the defendants being of the view that the petitioner is not entitled for exparte injunction prayed for. Pursuant to the notices issued to the opposite parties, who are the brothers and parents. The respondent nos.1 and 2 have put in appearance but have not filed their objection to the interim injunction application (6-C) nor their written statements in response to the plaint. The interim injunction application (6-C) is pending consideration since 26.4.2022.

Considering the totality of the circumstance, this Court is of the opinion that ends of justice would stand served if appropriate directions are issued to the learned Judge Small Cause Court Varanasi, seized with the interim injunction application (6-C), to decide the same within a time frame fixed by this Court.

Accordingly, the petition is disposed of by requiring the Judge Small Cause Court Varanasi to take up the interim injunction application (6-C) and decide the same, expeditiously, preferably on the date fixed which is stated to be 16.01.2024 and if for some reason final orders cannot be passed on the said date, all endeavor shall be made by the learned Judge Small Cause Court Varanasi to decide the said application within next three weeks from 16.01.2024.

Order Date :- 2.12.2023

m.a.