

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 12081 of 2023

Petitioner :- Virendra And 10 Others

Respondent :- Ramchandra

Counsel for Petitioner :- Vinod Kumar

Hon'ble Ashutosh Srivastava,J.

Heard Shri Vinod Kumar, learned counsel for the petitioners.

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 instituted for a direction to the Civil Judge (Jr.Div.), Azamgarh to decide the Civil Suit No. 1305 of 2022 (Ramchandra versus Virendra and others) within the time frame fixed by this Court.

Learned counsel for the petitioners submits that petitioners are defendants in the suit filed by the plaintiff-respondent. The plaintiff-respondent has instituted a suit on 23.8.2022 for grant of permanent injunction. Learned counsel for the petitioners submits that plaintiff/respondent has filed the suit in order to harass the petitioners. Learned counsel for the petitioners submits that more than 1 year 3 months has been passed, but the Court below is only fixing the dates again and again.

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

Perusal of the order-sheets reveals that only petitioner-defendant Nos. 1 to 3 have put in appearance and the case was fixed for filing of written statements. All the petitioners have filed the present petition, but all the petitioners have not put in appearance before the Court below and the dates are being fixed for effecting service upon them.

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. The petition is accordingly, ***dismissed***.

Order Date :- 29.11.2023

Ravi Prakash

(Ashutosh Srivastava, J.)