

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 12194 of 2023

Petitioner :- Rajpati

Respondent :- Shambhu And Another

Counsel for Petitioner :- Sanjay Kumar Mishra

Hon'ble Ashutosh Srivastava,J.

Heard Sri Sanjay Kumar Mishra, 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 trial Court i.e. Civil Judge (Junior Division), Court No.13, Deoria to decide the Restoration Application dated 20.4.2004 filed by the plaintiff-petitioner under Order 9 Rule 9 read with Section 151 C.P.C. registered as Misc. Case No.28/08 for recalling the order dated 10.11.2003, dismissing the Original Suit No.1156/81, within a time frame fixed by this Court.

Learned counsel for the petitioner submits that suit of the plaintiff/petitioner for permanent injunction was dismissed for non-appearance of the plaintiff/petitioner on the date fixed in the matter and an application under Order 9 Rule 9 read with Section 151 C.P.C. was filed along with an application for condonation of delay, which is pending consideration since the year 2004. He further submits that cause for non-appearance of the plaintiff/petitioner has been sufficiently explained in the said application, however, even after passing of nearly 19 years, the said application has not been considered and brought to its logical end. He next submits that purpose of filing present petition shall stand served if the appropriate directions are issued to the Civil Judge (Junior Division), Court No.13, Deoria, to decide the restoration application dated 20.4.2004, filed for recalling the order dated 10.11.2003, passed in Original Suit No.1156/81, registered as Misc.Case No.28/08, expeditiously.

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

From perusal of the order-sheet brought on record, I find that though the application, seeking recall of the order dated 10.11.2003, was moved on 20.4.2004 along with an application seeking condonation of delay but even after passage of nearly 19 years, the said application has not been decided and dates are being fixed for the said purpose, I find it is a fit case in which directions for expeditious disposal of the pending application registered as Misc.Case No.28/08 may be ordered by this Court.

Accordingly, the petition is **disposed of** by requiring the Civil Judge (Junior Division), Court No.13, Deoria, seized with the proceedings of Misc.Case No.28/08 in Original Suit No.1156 of 1981, to take up the restoration application dated 20.4.2004 and pass appropriate orders thereon within a period of two months, from the date of production of certified copy of order of this Court, strictly in accordance with law.

Order Date :- 1.12.2023
m.a.