

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 12535 of 2023

Petitioner :- William Dilawar

Respondent :- Rev. Albert Benjamin And 2 Others

Counsel for Petitioner :- A.D. Saunders

Hon'ble Ashutosh Srivastava,J.

Heard Shri A.D. Saunders, learned counsel for the petitioner.

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

Present petition, under Article 227 of the Constitution of India, has been filed for a direction to the Additional District and Sessions Judge, Court No. 10, Bareilly, to dispose of the application for stay dated 09.05.2023, filed in Misc. Appeal No. 22 of 2023, Suneel Masih versus Albert Benjamin.

Learned counsel for the petitioner has submitted that the plaintiff/respondent no. 1, to the case, Rev. Albert Benjamin was a pastor in Sadar Methodist Church, Bareilly Cantonment, filed a suit assailing his transfer order from the Sadar Methodist Church, Bareilly Cantonment to the Methodist Church Faridpur, Bareilly. The trial Court on the application for interim injunction passed an order staying the transfer order. The said order has been assailed in Misc. Appeal No. 22 of 2023. An application for stay, of the order, granting injunction, dated 04.05.2022, passed by the Civil Judge, (Senior Division)/ Small Causes Court, Bareilly, in Original Suit No. 214 of 2023, has been filed which is still pending since 09.05.2023.

Shri A.D.Saunders, learned counsel for the petitioner has invited the attention of the Court to the Rule 2 of Order 39 CPC, which is applicable to the State of U.P., particularly, to Clause 2 (b), to demonstrate that no injunction can be granted to stay the operation of the order of transfer of any employee, including any employee of the Government, and any order for injunction granted in contravention of the provisions of the Order 39 Rule 2 (b) would be void.

Since the plaintiff/respondent no. 1 is an employee of the

petitioner, the said provision is applicable to him with all vigor. He has further invited the attention of this Court, to the proceedings of the Misc. Appeal which has been brought on record by filing order sheet, Annexure No. 13 to the petition, to demonstrate that the disposal of the stay application, filed in Misc. Appeal, is unnecessarily being delayed by the plaintiff/ respondents. He submits that now 11.12.2023 has been fixed for consideration of the stay application and accordingly prayed that appropriate direction be issued to the Appellate Court, seized with the Misc. Appeal of the petitioner, to consider and pass appropriate orders on the date fixed in the Appeal.

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

From the submissions so advanced by Shri A.D.Saunders, learned counsel for the petitioner, and from the perusal of the order sheet, brought on record, it is borne out that the application for stay which was filed on 09.05.2023 and notices were issued thereon, the plaintiff/respondent has put in appearance and is avoiding the disposal of the said application, the Court is of the opinion that the petition can be disposed of by directing the Court concerned for expeditious disposal of stay application.

Accordingly, the petition is ***disposed off*** by requiring the learned Additional District and Sessions Judge, Court No. 10, Bareilly, seized with the Misc. Appeal No. 22 of 2023, Suneel Masih versus Albert Benjamin, and application for stay, filed in the said Appeal to pass appropriate orders on the next date fixed, in the matter i.e. 11.12.2023 or within 2 weeks from the date fixed.

It is expected from the Appellate Court in seisin of the proceedings to pass appropriate orders within the time frame provided by this Court.

Order Date :- 8.12.2023

Deepak/