

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 12630 of 2023

Petitioner :- Dwarika Prasad Jaiswal Alias Dwarika Prasad Kalwar

Respondent :- Akhilesh Kumar Tiwari And 5 Others

Counsel for Petitioner :- Shreya Gupta,Ragini Gupta

Hon'ble Ashutosh Srivastava,J.

Heard Ms. Shreya Gupta, 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 the India has been filed for a direction to the Civil Judge (Senior Division), Kanpur to decide the application, Paper No. 25-Ga, under Order VII Rule 11 CPC within a time frame fixed by this Court. A further prayer for a direction to the Civil Judge (Senior Division) Kanpur, to decide the Suit No. 2878 of 2014 (Akhilesh Kumar Tiwari and others vs. Badri Prasad Kalwar and others), within a time frame fixed by this Court, has also been made.

Learned counsel for the petitioner during the course of arguments has confined the relief for expeditious disposal of the interim injunction application, Paper No. 25-Ga, under Order VII Rule 11 CPC, filed in Suit No. 2878 of 2014 (Akhilesh Kumar Tiwari and others vs. Badri Prasad Kalwar and others).

The petitioner is defendant in a suit being Suit No. 2878 of 2014, Akhilesh Kumar Tiwari and others vs. Badri Prasad Kalwar and others). Learned counsel for the petitioner submits that the suit itself is an abuse of process of Court, inasmuch as the previous litigation which traveled up to the Apex Court has been decided against the plaintiff and the present suit has been filed more or less for the same relief by clever drafting by overlooking the earlier proceeding. She further submits that an application under Order VII Rule 11 CPC has been filed, which has been registered as Paper No. 25-Ga, which is pending consideration since 12.05.2016

and the purpose of filing the present petition would stand subserved if appropriate directions are issued to the Civil Judge (Senior Division) Kanpur to expedite the disposal of the application under Order VII Rule 11 CPC (paper No. 25-Ga) within a time frame fixed by this Court.

In order to buttress her submissions, learned counsel has invited the attention of this Court to the order sheet of the proceedings, annexed as Annexure 5 to the petition, particularly to the order dated 12.05.2016 and onwards to submit that the application under Order VII Rule 11 read with 151 CPC was filed on 12.05.2016 and 18.08.2016 was fixed for its disposal and filing of written statements/ framing issues. However, various dates were fixed but the learned Civil Judge, Senior Division, ignoring the application under Order VII Rule 11 has been fixing the case for filing of written statement and framing of issues etc. She submits that though the written statements as well as Additional written statements have been filed but the application under Order VII Rule 11 CPC remains pending. It has also been submitted that the disposal of the application under Order VII Rule 11 CPC is warranted inasmuch as it would certainly save precious time of the Court for proceeding further.

Having heard learned counsel for petitioner this Court is of the opinion that ends of justice would stand subserved, if directions are issued for expeditious disposal of the application under Order VII Rule 11 CPC which is still pending since the year 2016.

Accordingly, the petition is ***disposed off*** by requiring the Civil Judge (Senior Division) Kanpur, seized with the application under Order 7 Rule 11 CPC, filed in Suit No. 2878 of 2014 (Akhilesh Kumar Tiwari and others vs. Badri Prasad Kalwar and others), to take up the same on the next date fixed, or within two months from the date of service of certified copy of the order of this Court, in accordance with law, without granting unnecessary adjournment to either of the parties.

Order Date :- 15.12.2023

Deepak/