

Court No. - 6

Case :- MATTERS UNDER ARTICLE 227 No. - 21911 of 2020

Petitioner :- Km. Soni

Respondent :- Spl. Judge P.C. Act Ist/Addl. District Judge Lucknow And Ors.

Counsel for Petitioner :- Arvind Kumar Jauhari, Amitabh Misra

Counsel for Respondent :- Mohammad Subhan, Mohd Wajid Irfan

Hon'ble Rajnish Kumar, J.

1. Heard Sri Arvind Kumar Jauhari learned counsel for the petitioner and Sri Mohd Wajid Irfan learned counsel for the respondent nos.3 and 4. None appears on behalf of the respondent nos.5 and 6 despite sufficient service. The respondent nos.1 and 2 are the court concerned.

2. Learned counsel for the petitioner submits that the application filed by the petitioner under Order 26 Rule 10A C.P.C, for commission for scientific investigation has wrongly and illegally been dismissed as not maintainable, whereas the petitioner who is plaintiff in the suit has a right to file an application. The revision filed by the petitioner has also been dismissed without considering the grounds raised by the petitioner. Therefore, the petitioner is constrained to approach this Court and the impugned orders are liable to be set aside.

3. Learned counsel for the respondent nos.3 and 4 submits that the application moved for scientific investigation i.e.C-37 was allowed with the consent of the petitioner, on which the report has also been submitted by the Commissioner, and no objection to the same has been filed and after one year, another application was filed only to delay the proceedings of the regular suit filed in the year 2009. The application filed by the petitioner has rightly been dismissed by the trial court filed in Regular Suit no.307 of 2009. The revision has also been dismissed after considering the grounds raised by the petitioner by a reasoned and speaking order. There is no illegality or infirmity in the impugned orders. The petition is liable to be dismissed.

4. Having considered the submissions of learned counsel for the parties, I have perused the records.

5. The suit for declaration and cancellation of sale deed dated 04.05.2006 and permanent injunction has been filed by the petitioner in the year 2009. The validity of the Will dated 03.01.2004 has been questioned by the defendant nos.1 and 2 in the suit i.e. the respondent nos.3 and 4 in this petition. An

application for commission for scientific investigation, C-37 was moved by the respondent nos.3 and 4, which was allowed with the consent of the parties. In pursuance thereof, a report was submitted by the Commissioner which is Paper no.A-49. In the said report, the difference in the signatures of Ashok Kumar has been found. The petitioner has not filed any objection against the said report. He moved a separate application for rebuttal, which has been dismissed by means of the order dated 18.03.2016 recording a finding that the application has been moved only to delay the proceedings of the case and if the petitioner was aggrieved with the report of the scientific investigation i.e. paper no.A-49, he could have filed objection to the same or revision against the same and dismissed the application. Therefore, the contention of the learned counsel for the petitioner that the application has been dismissed as not maintainable is misconceived and not tenable and is liable to be repelled only and accordingly repelled. This Court also does not find any illegality or error in the findings recorded by the trial court.

6. The revisional court also, after considering the grounds raised by the petitioner and affording opportunity of hearing to the parties, and considering the material on record by means of the reasoned and speaking order, dismissed the revision vide order dated 07.03.2020 passed in civil revision no.128 of 2016. The relevant findings recorded by the revisional court is extracted here-in-below:-

"10. मैंने विद्वान अवर न्यायालय द्वारा पारित आलोच्य आदेश का परिशीलन किया। आलोच्य आदेश के परिशीलन एवं विश्लेषण से यह तथ्य स्पष्ट हो रहा है कि विद्वान न्यायालय / अपर सिविल जज (सी०डी०) कक्ष सं०-20, लखनऊ द्वारा पुनरीक्षणकर्ता - वादिनी की ओर से प्रस्तुत प्रार्थना पत्र सी -51 अर्न्तगत आदेश 26 नियम 10 ए सि०प्र०सं० पर बिल्कुल सही प्रकार से निष्कर्ष निकाला है कि प्रार्थना पत्र सी -37 पर पारित आदेश के अनुक्रम में विधि विज्ञान प्रयोगशाला, महानगर, लखनऊ से मृतक अशोक कुमार के हस्ताक्षरों का वैज्ञानिक अन्वेषण पत्रावली पर कागज संख्या ए -49 प्रेषित की गयी परन्तु उक्त आख्या से यदि पुनरीक्षणकर्ता - वादिनी व्यथित थी तो उसको उसके विरुद्ध अपनी आपत्ति विचारण न्यायालय के समक्ष अथवा पुनरीक्षण न्यायालय में पुनरीक्षण प्रस्तुत करना चाहिए था किन्तु उसकी ओर से ऐसा नहीं किया गया और मात्र मूल बाद जोकि वर्ष 2009 लम्बित चल रहा है, को विलम्बित करने के आशय से सी-51 प्रार्थना पत्र अर्न्तगत आदेश 26 नियम 10 ए सि०प्र०सं० प्रस्तुत किया गया प्रतीत हो रहा है और उनके द्वारा इस प्रार्थना पत्र के निस्तारण में अपने न्यायिक विवेक का प्रयोग करते हुए विधि सम्मत एवं न्यायोचित आदेश पारित किया गया है जिसमें इस पुनरीक्षण के माध्यम से पुनरीक्षणकर्ता -वादिनी कोई ऐसा तथ्य उजागर नहीं कर सकी जिसके आधार पर आलोच्य आदेश में किसी प्रकार का

हस्तक्षेप किया जा सके। जब एक बार प्रस्तुत मामले में वैज्ञानिक आख्या प्राप्त की जा चुकी है तो पुनः वैज्ञानिक आख्या आहूत किए जाने से मामले के विधि सम्मत ढंग से न्याय-निर्णयन करने में न्यायालय को असुविधा एवं कठिनाई उत्पन्न होने की संभावना से इंकार नहीं किया जा सकता है। विद्वान अवर न्यायालय /अपर सिविल जज (सी.डि.) कक्ष सं0-20,लखनऊ द्वारा जो सी-51 प्रार्थना पत्र अस्वीकार किया गया है, उसमें कोई त्रुटि एवं तात्त्विक अनियमितता परिलक्षित नहीं हो रही हैं।

11. उपर्युक्त वर्णित आलोच्य आदेश के परिशीलन एवं उपरोक्त विवेचना के आधार पर मेरा यह मत है कि विद्वान अवर न्यायालय द्वारा पारित आलोच्य आदेश पत्रावली पर उपलब्ध तथ्यों के अनुकूल है और आलोच्य आदेश पारित करने में विद्वान अवर न्यायालय / द्वारा कोई त्रुटि एवं अनियमितता कारित नहीं की गयी है। आलोच्य आदेश में इस पुनरीक्षण न्यायालय द्वारा हस्तक्षेप किया जाना विधिक रूप से अपेक्षित नहीं है और यह सिविल पुनरीक्षण बलहीन होने के कारण निरस्त होने योग्य है ।"

7. The Commission for scientific investigation can be issued under Rule 10A(1) Order 26 C.P.C. Rule 10A(2) provides that provisions of Rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9. Rule 10A is extracted hereinbelow:-

"10A. Commission for scientific investigation.—(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9."

8. Rule 10 of Order 26 CPC provides the procedure for Commissioner, which is extracted hereinbelow:-

"10. Procedure of Commissioner.—(1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

(2) Report and depositions to be evidence in suit. Commissioner may be examined in person.—The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit."

9. In view of the above, the application for commission for scientific investigation can be moved under Rule 10A(1) of Order 26 and if it is allowed, the procedure as provided under Rule 10 of the Order 26 is to be followed as per sub-rule (2) of Rule 10A. Rule 10(1) provides that after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court which shall form part of the record and as per Rule 10(2), the Court or with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made investigation. Sub Section (3) of Rule 10 provides that where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as such may as it shall thinks fit. Thus, once the commission was issued for scientific investigation on the report of the respondent nos.3 and 4 and the report was submitted, it was open to the petitioner to file objection and even get summoned the Commissioner for cross examination but the petitioner failed to do so. Once, the scientific investigation has already been done, there was no occasion to file the second application for rebuttal or to disprove the report.

10. In view of the above, this Court is of the view that the application filed by the petitioner has rightly been rejected in accordance with law by the order dated 18.03.2016 passed in Regular Suit no.307 of 2009 and the revision filed by the petitioner has been dismissed by means of the order dated 07.03.2020 by passing a reasoned and speaking order on the basis of record. There is no illegality or error in the impugned orders which may call for any interference by this Court. The petition is misconceived and lacks merit.

11. It is, accordingly, **dismissed**. No order as to costs.

(Rajnish Kumar,J.)

Order Date :- 1.11.2023
Harshita