

Court No. - 17

Case :- MATTERS UNDER ARTICLE 227 No. - 2133 of 2022

Petitioner :- Smt.Shobha Srivastava And Others

Respondent :- Small Causes Court Faizabad And Others

Counsel for Petitioner :- Vipin Kumar Mishra

Counsel for Respondent :- Uma Shankar Sahai,Pradeep Kumar Singh Vats,Raghaw Ram Upadhyay,Uma Shankar Sahai

Hon'ble Alok Mathur,J.

1. Heard Sri Vipin Kumar Mishra, learned counsel for the petitioners as well as Sri Raghaw Ram Upadhyay, learned counsel appearing on behalf of respondent nos. 2 to 5.

2. By means of present writ petition the petitioners have challenged the order dated 31.05.2022, passed by Small Causes Court in SCC Execution Case No. 08 of 2017 - Savitri Devi and Others Vs. Kapil Srivastava and Others, where the Court has permitted the Amin to break open the lock of the disputed property to give effect to the final decree dated 21.01.1982, passed by the Court of competent jurisdiction.

3. It has been submitted by learned counsel for the petitioners that father of respondent nos. 2 to 5 had filed a suit for eviction against petitioners and the said suit has been registered as SCC Case No. 57 of 1980 and same was decided on 21.01.1982 in favour of the respondent. The predecessor in interest has filed revision, same was dismissed on 12.05.1983 and even the writ petition filed against the said order being Writ Petition No. 3408 of 1983 (Rent Control) which was dismissed by means of judgment and order dated 22.01.1997.

4. It is the case of the petitioners that execution proceedings were initiated by the respondents on 19.07.2017 i.e. after lapse of 35 years. The petitioners had also filed objection in the execution proceedings on 27.01.2018, but the objections were rejected on 06.04.2018. Against the rejection order Civil Appeal was filed which was also dismissed by means of order dated 07.08.2018. Subsequently the petitioners had approached the District Judge by filing a Civil Revision which was also dismissed on 10.11.2021. Against all the orders were assailed by the petitioners in Writ Petition No. 1664 of 2022. The said writ petition was filed on 19.05.2022, where, after considering the facts, this Court issued notices to the respondents. Clearly after filing of the said writ petition, order dated 31.05.2022

came to be assailed where execution Court directed the Amin to break open the lock despite the fact that writ petition was already pending before this Court, while objections in the execution proceedings were rejected, the petitioners filed subsequent writ petition (present writ petition) challenging the order dated 31.05.2022 and interim protection was granted to the petitioners.

5. It is submitted by learned counsel for the respondents that present writ petition is not maintainable inasmuch as petitioners have equally efficacious remedy of revision under Section 25 of Provincial Small Causes Court Act and without availing the alternate remedy the petitioners have approached this Court. It is further submitted that once in the execution proceedings objections of petitioners were rejected and orders having been passed in the the execution case, while writ petition was already pending, no independent cause of action arose to the petitioners to assail the said order before this Court.

6. Heard learned counsel for the parties and perused the record.

7. This Court has given anxious consideration to the facts of the present case. It is evident that decree dated 21.01.1982 has become final and stand of petitioners has been rejected up to the Hon'ble Apex Court. It seems that even in the execution proceedings objections of the petitioners were rejected by the competent Court itself and subsequently by the District Judge and against the said orders, writ petition is pending where no interim protection is granted to the petitioners.

8. In the aforesaid circumstances, this Court is of the considered view that firstly the petitioners have efficacious alternate remedy of revision and also that all the orders passed in execution proceedings have been assailed by them and this option was already available to them while assailing the said orders in writ petition, which is pending.

9. For the aforesaid reasons, present writ petition filed by the petitioners is not maintainable, mainly on the ground of availability of efficacious alternate remedy to them. Accordingly, writ petition being devoid of merits is **dismissed**.

10. However, prayer is made by learned counsel for the petitioners, that they may be permitted to file revision before the competent Court and till such time they may be protected from eviction.

11. In view of above, liberty is granted to the petitioners to file revision before the competent Court within four weeks from

today and till such time the protection granted to the petitioners by this Court shall continue. In the meanwhile, petitioners are also granted liberty to approach the competent forum and press their application for interim relief.

Order Date :- 18.10.2023

A. Verma

(Alok Mathur, J.)