

Court No. - 17

Case :- WRIT - C No. - 1001559 of 2005

Petitioner :- U.P.State Sugar Corporation Thru G.M.And Another

Respondent :- M/S Arora Sugar Company Through Lalit K.Arora And 4 Others

Counsel for Petitioner :- P.K.Sinha, Anish Srivastava Lal, Meena Verma, S.K. Srivastava, Sanjay Dikshit

Counsel for Respondent :- C.S.C., Nandan Verma, R.S.Jauhari, Shesh Verma

Hon'ble Alok Mathur, J.

Heard Shri Sunil Kumar Singh, learned counsel holding brief of Shri P.K. Sinha appearing on behalf of petitioner.

An oral prayer has been made by the petitioner to treat the present petition under Article 227 of the Constitution of India rather than 226 of the Constitution of India.

Learned counsel for the respondent does not object to the prayer made by the petitioner, accordingly the present petition is being disposed of treating it to be a petition under Article 227 of the Constitution of India.

It has been submitted by the learned counsel for the petitioner that a suit was filed by the respondent no.1 for recovery of an amount of Rs.9691.93/-. The said suit was registered as RS No.244/1989 [M/ S Arora Sugar Company Limited vs. R.B. Laxman Dass Sugar and General Mills Limited and Others]. The said suit was decreed by means of the order dated 09.5.1985 by the Munsif, Kaisarganj, Bahraich.

The petitioner being aggrieved by the order dated 09.5.1985 passed by the Munsif Kaisarganj, Bahraich had preferred an appeal under Section 96 of the CPC before the learned District Judge, Bahraich. Due to non-appearance by the petitioner on 04.02.1989 the appeal was dismissed in default but the same was restored to its original number on 30.3.1991 on an application being moved by the petitioner.

Again the said appeal was dismissed for want of prosecution on 29.5.1995 and an application under Order 41 Rule 19 CPC read with section 151 CPC was moved by the petitioner. The application under Order 41 Rule 19 CPC was rejected on 05.9.1995 on the ground that no 'vakalatnama' was furnished nor the application has been signed on behalf of the petitioners. Again an application was moved under Order 41 Rule 19 read with section 151 and 153 CPC and the same has been rejected by means of the impugned order dated 20.12.2004 which order has been assailed in the present petition.

This Court by means of the order dated 12.9.2006 had passed an interim order restraining the respondents from recovering the decretal amount.

It is noticed that when an appeal is dismissed for want of prosecution remedy lies under Order 41 Rule 19 which has been duly exercised by the petitioner and application for readmission/ recall has been moved which has also been rejected. Further, in case application under Order 41 Rule 19

is rejected then against the said order an appeal is maintainable under Order 43 Rule 1 (t).

From the aforesaid, it is clear that the petitioner has an efficacious alternative remedy when his application under Order 41 Rule 19 has been rejected.

Once it is found that there is a statutory and efficacious remedy available to the petitioner, extraordinary remedy available before this Court under Article 227 of the Constitution of India cannot be exercised in absence of any apparent error being demonstrated before this Court.

It is noticed that the suit was for a petty sum of rupees less than 10,000/- and also considering the fact that petitioner has an efficacious alternative remedy of appeal petition is being dismissed on the ground of alternative remedy.

Order Date :- 22.11.2023

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(Alok Mathur, J.)