

Court No. - 6

Case :- MATTERS UNDER ARTICLE 227 No. - 5115 of 2023

Petitioner :- Shri Chand Kesarwani

Respondent :- Ram Chandra Keshawani And 4 Others

Counsel for Petitioner :- Shweta Kesarwani

Hon'ble Rajnish Kumar,J.

Learned counsel for the petitioner submits that the case in hand is covered by the order dated 11.12.2023 passed in the Matter Under Article 227 No.5098 of 2023, which is extracted here-in-below:-

- "1. Heard, Ms.Shweta Kesarwani, learned counsel for the petitioner.
2. This petition has been filed for a direction for disposal of Original Suit No.800 of 2019; Shri Chandra Versus Ram Chandra and others pending in the court of Additional Civil Judge (Jr.Div.), Pratapgarh.
3. This court had passed the following order on 10.10.2023:-
"Heard Ms. Shweta Kesarwani, learned counsel for the petitioner.
List on 18.10.2023, as fresh.
By the next date of listing, the learned counsel for the petitioner shall prepare the case in the light of the judgement of the Division Bench of this Court passed in the cases of **Km. Shobha Bose v. Judge Small Causes & Ors., 2011 (88) ALR 850 and Ali Shad Usmani & Ors. v. Ali Isteba & Ors. 2015 (109) ALR 513.** "
4. Learned counsel for the petitioner does not dispute that this court has declined to direct for disposal of the Suit in the aforesaid cases. However she submits that the petitioner is a senior citizen, therefore a direction may be issued for disposal of the Suit in a time frame. She further, relying on a judgment and order dated 20.10.2023 passed in **Yashpal Jain Versus Sushila Devi and others; in Civil Appeal No.4296 of 2023; MANU/SC/1184/2023**, submits that the Hon'ble Supreme Court has issued certain directions in regard to time to be taken at different stages in disposal of cases under Civil Procedure Code, but the same is also not being followed.
5. This court, in the Case of **Shobha Bose Versus Judge, Small Causes and others; 2011(88)ALR 850 (MANU/UP/2467/2009)**, has held in paragraph 3 and 4 as under:-
"3. We hasten to add that even in such kind of cases, ordinarily this Court would relegate the petitioner to the remedy before the Court in seisin of the lis to take appropriate decision, as it is that Court which can consider the matter in totality of the circumstances.
4. When tested on the aforesaid parameter, we are of the opinion that direction sought for is not fit to be granted. We are of the opinion that this petition is absolutely misconceived and is liable to be dismissed with cost and, accordingly, it is dismissed with cost of ` 5,000/- to be deposited by the petitioner in the account of the Allahabad High Court Mediation and Conciliation Centre at Allahabad within four weeks. In case she fails to deposit the said amount within the time stipulated, the District Magistrate, Allahabad shall recover the said amount from the petitioner as arrears of land revenue and deposit the same in the aforesaid account."

6. The Division Bench of this Court, in the case of **Ali Shad Usmani and Ors. Versus Ali Isteba and Ors; 2015 (109) ALR 513 (MANU/UP/3334/2014)**, has held that it would be most inappropriate to Court to entertain a writ petition under Article 226 and /or under Article 227 of the Constitution simply for the purpose of expediting the hearing of a suit and if such orders, if granted, place a class of litigants, who move the Court in a separate and preferential category whereas other cases which may be of similar or greater antiquity and urgency are left to be decided in the normal channel. Hence, any such direction may be issued with the greatest care and circumspection by the High Court otherwise the Civil Courts will be overburdened, which have been expedited by the High Court and most of the litigants cannot afford the expenses of moving the High Court and would not, therefore, be in a position to have the benefit of such an order. The Division Bench has further observed that ultimately, it would be left to the judicious exercise of discretion of the concerned court to determine whether a ground for urgency has been made out and emphasized that there may be other cases such as involving senior citizens, those who are differently abled or people suffering from a particular disability socio-economic or otherwise which may prime cause of urgent disposal and it is for the Trial Judge in each case to apply his or her mind and decide whether the hearing of the suit to be expedited and declined to entertain the petition. Relevant paragraphs 1 and 2 are extracted here-in-below:-

"1. The only relief which is sought in this proceeding is in the following terms:

"(i) a writ, order or direction in the nature of mandamus directing the respondent No. 6 to expedite the hearing of the Suit No. 271 of 2005, Ali Shad and others v. Ali Isteba and others.

(ii) a writ, order or direction in the nature of mandamus commanding the respondent No. 6 to decide the suit within the stipulated period granted by this Hon'ble Court."

We are not inclined to issue a direction for the expeditious hearing of a Civil Suit which is pending before the Civil Judge (Junior Division), District-Azamgarh. It would be most inappropriate to Court to entertain a writ petition under Article 226 and/or under Article 227 of the Constitution simply for the purpose of expediting the hearing of a suit. Such orders, if granted, place a class of litigants, who move the Court in a separate and preferential category whereas other cases which may be of similar or greater antiquity and urgency are left to be decided in the normal channel. Hence, any such direction may be issued with the greatest care and circumspection by the High Court otherwise the Civil Courts will be overburdened only with requests for expeditious disposal of suits, which have been expedited by the High Court. Most of the litigants cannot afford the expense of moving the High Court and would not, therefore, be in a position to have the benefit of such an order.

2. Ultimately, it must be left to the judicious exercise of discretion of the concerned Court to determine whether a ground for urgency has been made out. We emphasize that there may be other cases such as involving senior citizens, those who are differently abled or people suffering from a particular disability socio-economic or otherwise which may prime cause of urgent disposal. It is for the learned Trial Judge in each case to apply his or her mind and decide whether the hearing of the suit to be expedited. For these reasons, we are not inclined to entertain the petition. The petition is, accordingly, dismissed. There shall be no order as to cost."

7. In view of above, any ground as submitted by learned counsel for the

petitioner can be considered by the concerned court only looking to the facts and circumstances of the case and this court cannot issue any direction.

8. The Hon'ble Supreme Court, in a recent order dated 10.11.2023 passed in Writ Petition(s) Criminal) No(s). 587 of 2023 has held that since every High Court and every court in the country has a huge pendency, the Constitutional Court should avoid temptation of fixing a time-bound schedule for disposal of any case before any Court unless the situation is extra ordinary.

9. In view of above no direction for disposal of suit in a time bound manner can be made by this court unless the situation is extra ordinary and the ground of urgency shown by learned counsel for the petitioner and the directions of Hon'ble Supreme Court can be considered by the concerned court only.

10. With the aforesaid, the petition is **disposed of.**"

In view of above the petition is **disposed of** in terms of the aforesaid order.

(Rajnish Kumar,J.)

Order Date :- 11.12.2023

Banswar