

Court No. - 6**Case :-** MATTERS UNDER ARTICLE 227 No. - 6134 of 2023**Petitioner :-** Laxmi Kant**Respondent :-** Civil Judge Junior Division Ambedkar Nagar And 2 Others**Counsel for Petitioner :-** Raj Karan Singh**Hon'ble Rajnish Kumar,J.**

1. Shri Raj Karan Singh, learned counsel for the petitioner submits that the petitioner has filed Regular Suit No.925 of 2022; Laxmi Kant Versus Kamla Devi and others for cancellation of Gift Deed made by the respondent no.3 in favour of respondent no.2, which has not been disposed of till date, therefore a direction may be issued for disposal of the said Suit expeditiously within a time bound manner.
2. Perusal of the order sheet, placed on record indicates that the written statement was filed on 02.02.2023 and since 11.04.2023 the case is being fixed for filing replication by the petitioner, but till date the same has not been filed. As admitted by learned counsel for the petitioner, the respondent no.3 has died, therefore he has moved an application for substitution, a copy of which has been placed on record as annexure no.3 to this petition, which has still not been disposed of.
3. On a query being put, learned counsel for the petitioner also failed to indicate any urgency in the matter. He only states that the case is pending for the last one year, therefore a direction may be issued for early disposal of the case.
4. Having considered the submissions of learned counsel for the petitioner, I have perused the records.
5. This petition has been filed arraying a dead person as respondent no.3 in this petition, who was defendant in the aforesaid suit and application for substitution on account of his death is still pending, therefore this petition has been filed

against a dead person. The petitioner has also not filed the replication before the trial court till date for which the petitioner himself is seeking time before the trial court for the last ten months, therefore a litigant, who himself is not assisting the court for disposal of the case, cannot approach this court under Article 227 of the Constitution of India for a direction for expeditious disposal of the Suit and no direction can also be issued on his instance.

6. The petition has been filed for a direction to decide the Original Case No.925 of 2022; Laxmi Kant Versus Kamla Devi and others pending in the court of Civil Judge (Jr.Div.), Ambedkar Nagar within stipulated time, whereas this direction cannot be issued; firstly in a case of 2022 that too in the aforesaid facts and circumstances and also when there is huge pendency of cases before the courts. Secondly a direction for expeditious disposal of suit cannot be issued creating a separate class for deciding the Suit out of turn without any extraordinary urgency and sufficient cause. Therefore any such direction can be issued only with greatest care and circumspection because it will also amount to discrimination with most of the litigants, who cannot afford to move to this court, whereas their cases are pending since much prior to the suit of the petitioner and they may have greater urgency.

7. A Division Bench of this court, considering the issue in the case of **Shobha Bose Versus Judge, Small Causes & Others; 2010 (1) ADJ 531**, has held that such a prayer made in routine manner cannot be granted without serious application of mind and it can be exercised for expeditious disposal in fairly extraordinary circumstances and not in a routine manner. It is fit to be exercised only when the court comes to the conclusion that delay would cause gross injustice and while deciding this issue the court would bear in mind that it does not cause injustice to

other litigants, who are waiting for justice from before because the very nature of order delays cases filed earlier. The Bench has also observed that it is common knowledge that direction of the nature, if granted, affects the working of the court and the Judges, in seisin of such cases, ordinarily remain occupied only in those cases in which directions have been given for expeditious disposal and cases filed earlier gets ignored as those litigating from earlier years have no resources to approach this court seeking expeditious disposal of the matter. The relevant paragraph 2 is extracted here-in-below:-

"2. The prayer made in this petition for expeditious disposal of the suit/revision, in sum and substance, is nothing but a prayer for out of turn hearing of the suit. We are unaware of the docket of the Judge, Small Causes Court in seisin of the matter. We also do not know that suits of earlier years in which old ladies figure, are pending or not. However, it is common knowledge that thousands of cases instituted earlier by persons more aged than the petitioner are unfortunately pending in the Court. It is systemic delay. It is further common knowledge that direction of the nature, if granted, affects the working of the Court and the Judges, in seisin of such cases, remain ordinarily occupied with only those cases in which directions have been given for expeditious disposal and cases filed earlier gets ignored as those litigating from earlier years have no resources to approach this Court seeking expeditious disposal of the matter. It is further common knowledge that many of the Judges, because of sheer number of such directions, are unable to carry out these directions and subjected to contempt proceedings and even personally directed to appear in such proceedings. Such a prayer made in routine manner can not be granted without serious application of mind. It is high time that we must give serious thought to all these considerations before passing any order for expeditious disposal. We are not oblivious of the fact that this Court does possess power to direct early disposal of the case but as often said more the power greater the responsibility. We are of the opinion that power to direct expeditious disposal of suit or for that matter any lis which, in sum and substance, means out of turn disposal is to be exercised sparingly in extraordinary circumstances and not in a routine manner. It is fit to be exercised only when the Court comes to the conclusion that delay would

cause gross injustice. However, while deciding this issue, the Court would bear in mind that it does not cause injustice to other litigants, who are waiting for justice from before because the very nature of order delays cases filed earlier. It causes resentment and dissatisfaction to those who are waiting for justice from before. It should be exercised only when it comes to the notice of this Court that Judge in seisin of the case is purposely avoiding to dispose of the suit for any oblique motive, which may defeat the justice. An order for expeditious disposal in a routine manner can not be countenanced."

8. Another 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."

9. Considering the aforesaid orders a Coordinate Bench of this court, in the case of **Yusuf Kamal Khan Versus Board of Revenue Lucknow and others; Misc. Single No.2862 of 2020**, disposed of the petition of a senior citizen with liberty to the petitioner to move appropriate application for expeditious disposal before the concerned court giving cogent reasons as to why the case should be given precedence over other older cases pending in the said court with the observation that the court concerned is expected to dispose of the same in accordance

with law after taking into account its roster of older cases.

10. The Hon'ble Supreme Court, in the case of **Yashpal Jain Versus Sushila Devi and others; Civil Appeal No.4296 of 2023**, framed three points for consideration. The second point is as under:-

"(ii) Whether any further direction or directions requires to be issued for concluding the proceedings in a time bound manner on account of Suit No.2 of 1985 pending for trial for past 41 years?"

11. The Hon'ble Supreme Court, while considering the aforesaid point, considered the huge pendency of cases before different courts, the provisions made in the Civil Procedure Code, the reasons for delay in disposal of cases on different counts and thereafter instead of directing for disposal of Suit in a time bound manner, issued certain directions to the trial courts to ensure 'speedy justice' and monitoring of cases by the High Courts, which are pending for more than five years.

12. The Hon'ble Supreme Court, in a recent order dated 10.11.2023 passed in **Writ Petition(s) (Criminal) No(s) 587/2023; Shaikh Uzma Feroz Hussain Versus The State of Maharashtra**, declined to entertain the petition for a direction for disposal of bail application in a time bound manner with the observation that if there is an extra ordinary urgency, the petitioner can always move the concerned Bench and if the request is genuine the concerned Bench will entertain it. The Hon'ble Supreme Court has also held that since the 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. The order is reproduced below:-

"Heard the learned counsel appearing for the petitioner.

His grievance is that his bail application filed in June, 2023 is not being taken up by the Bombay High Court.

In every High Court and especially the bigger High Courts, there are large number of Bail Petitions filed and therefore, some delay in disposal of the Bail Petitions is inevitable. If there is an extra ordinary urgency, the petitioner can always move the concerned Bench. We are sure that if the request is genuine, the concerned Bench will entertain it.

Subject to what is observed above, we are not inclined to entertain this petition. The Writ Petition is accordingly dismissed.

The learned counsel appearing for the petitioner insists on passing a direction to decide the case in a time-bound manner.

We are of the view 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.

Pending application also stands disposed of."

13. In view of above, this court is of the view that the petition for a direction for disposal of a case in time bound manner cannot be entertained and direction can not be issued by this court in a routine manner unless there is some extra ordinary urgency/situation, on account of which the delay may cause gross injustice. However in such type of cases also, the litigant may approach the concerned court, where the case is pending, giving cogent reasons showing extraordinary urgency/situation on account of which his case should be given precedence over other older cases, who can consider the same considering as to whether the case of a applicant/litigant should be given precedence or not over other older cases pending in the said court and also the cases which may have prime cause of urgent disposal, and proceed accordingly in accordance with law.

14. In view of above, this court is not inclined to entertain this petition.

15. The petition is **dismissed**. No order as to costs.

(Rajnish Kumar,J.)

Order Date :- 7.12.2023

Banswar