

Court No. - 6

Case :- MATTERS UNDER ARTICLE 227 No. - 6237 of 2023

Petitioner :- Vijay Kumar

Respondent :- Shiv Nath

Counsel for Petitioner :- Dinesh Kumar Shukla

Hon'ble Rajnish Kumar,J.

1. Heard, Shri Dinesh Kumar Shukla, learned counsel for the petitioner.
2. This petition has been filed challenging the order dated 17.09.2019 passed by the Civil Judge (Sr.Div.), Gonda in Regular Suit No.136 of 2024; Vijay Kumar and another Vs. Shivnath, by means of which the Suit has been dismissed under Order 7 Rule 11 (b) and (c) of Civil Procedure Code 1908 (here-in-after referred to as CPC), on account of non submission of court fees as determined by the order dated 15.11.2018 despite several opportunities granted to the petitioner and the judgment and order dated 14.02.2023 passed in Civil Appeal No.51 of 2022; Vijay Kumar and another Versus Shivnath by the Additional District and Sessions Judge, Court No.3, Gonda.
3. Learned counsel for the petitioner submits that the court fees was determined by means of order dated 15.11.2018 and though several opportunities were granted, but on account of financial constraints the court fees could not be deposited, therefore the impugned orders have been passed and the petitioner may deposit the remaining court fees if the opportunity is granted. He further submits that the court fees has wrongly been determined, therefore the impugned orders are not sustainable and liable to be set aside.
4. Having considered the submissions of learned counsel for the petitioner, I have perused the records.
5. The petitioner alongwith one Chandra Prakash filed Regular

Suit No.136 of 2014 for cancellation of sale deed. The petitioner paid court fees of Rs.200/-. Issue No.2 was framed in regard to the court fees, which was decided by means of order dated 15.11.2018 holding that there is deficiency of court fees, which was determined as 5,08,000/-. Thereafter the petitioner was granted time on 24.11.2018, 04.12.2018, 08.01.2019, 27.02.2019, 24.05.2019, 02.08.2019 and 26.08.2019, but the court fees was not paid, therefore by means of order dated 17.09.2019 the plaint has been dismissed under Order 7 Rule 11(b) and (c) of CPC.

6. Order 7 Rule 11 (b) provides that where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so, the plaint shall be rejected. Order 7 Rule 11(c) provides that where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so, the plaint shall be rejected. Proviso appended to Order 7 Rule 11 provides that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff. However Rule 13 of Order 7 provides that rejection of the plaint on any of the grounds here-in-before mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

7. Admittedly several opportunities were granted to the

petitioner before passing of the impugned order dated 17.09.2019, but the petitioner failed to pay the remaining court fees. The petitioner also failed to show any exceptional circumstance or any provision under law under which the further time could have been granted and any law under which the time can be granted after passing of the order under Order 7 Rule 11 (b) and (c). The petitioner filed the Civil Appeal No.51 of 2022, challenging the order dated 17.09.2019, which has also been dismissed by considering the grounds raised by the petitioner and plea of paying court fees was not taken even at the appellate stage. Even otherwise once the order has been passed no further opportunity can be granted.

8. So far as the plea of the petitioner is that the court fees has wrongly been determined is concerned, it can not be examined in this case because the order dated 15.11.2018, by means of which the issue no.2 in regard to valuation of suit was decided and the court fees was determined has not been challenged. Even otherwise it could have been examined in appropriate proceedings, if the said order would have been challenged.

9. The petitioner has also not impleaded the second plaintiff, namely Chandra Prakash, who had also filed the appeal, therefore this petition itself is not maintainable.

10. In view of above, this court is of the view that the impugned orders have rightly been passed in accordance with law, by speaking and reasoned orders. The petition is misconceived and lacks merit.

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

(Rajnish Kumar,J.)

Order Date :- 14.12.2023

Banswar