

Court No. - 7

Case :- MATTERS UNDER ARTICLE 227 No. - 1911 of 2024

Petitioner :- Ram Narayan And Another

Respondent :- District Judge, District Sultanpur And 6 Others

Counsel for Petitioner :- Vinod Kumar Tiwari

Counsel for Respondent :- Rudra Mani Shukla

Hon'ble Alok Mathur,J.

1. Heard Sri Vinod Kumar Tiwari, learned counsel for petitioner as well as Sri Rudra Mani Shukla, learned counsel for private respondents.

2. By means of present writ petition, the petitioners have assailed the order dated 14.02.2024 passed by Civil Judge (Jr. Div.), North, court No. 25, Sultanpur whereby rejecting the application under Order 9 Rule 13 CPC preferred by the petitioner as well as order dated 22.03.2024 passed by District Judge, Sultanpur whereby dismissing the Appeal No. 124/2024 preferred by the petitioner against the order of Civil Judge.

3. The facts in brief are that respondent No. 3 had filed a suit for permanent injunction against respondent No. 7. During suit proceedings, parties had entered into a compromise which was filed before the trial court and the suit was also decreed on the basis of compromise by means of order dated 12.03.2022. The Civil Judge (Jr. Div.), Sultanpur in its order has specifically recorded that the parties presented the compromise before this Court and the respective counsel had identified the parties to the said compromise on the basis of which the suit was decreed.

4. Subsequently, the petitioner claiming himself to be aggrieved by judgment and order dated 12.03.2022, had moved an application Order 9 Rule 13 CPC for setting side of the said order. In his application, he has stated that he is the owner of the disputed property and only when proceedings for demarcation of the said property was initiated, then the petitioner came to know about the judgment dated 12.03.2022 against which he moved an application Order 9 Rule 13 CPC.

5. The trial court has rejected the application firstly on the ground of delay and secondly on the ground of maintainability. On the ground of delay, it was stated that petitioner could not sufficiently explained the delay of nearly two years in filing the application Order 9 Rule 13 CPC and secondly it considered the fact that only a defendant against whom the proceedings have

been conducted ex-parte can approach the court for moving an application under Order 9 Rule 13 CPC and the applicant was not a party to the suit proceedings could not maintain the application consequently rejected his application. The petitioner being aggrieved by the order of the trial court dated 14.02.2024 preferred a miscellaneous civil appeal before the District Judge, Sultanpur.

6. The District Judge, Sultanpur also affirmed the findings recorded by the trial court dated 14.02.2024 where he has noticed that the petitioner was neither party in the Original Suit No. 399/2008 nor any ex-parte decree was passed in the said suit and consequently none of the ingredients mentioned in the Order 9 Rule 13 CPC was satisfied by the petitioner and accordingly rejected the appeal. The petitioner while assailing the impugned orders dated 14.02.2024 as well as 22.03.2024 has submitted that firstly the plaintiff had not made the petitioner as a party in the suit proceedings despite the fact that he is a necessary party and is the owner of the disputed property, and therefore he is person aggrieved, and accordingly an application for setting aside ex-parte order would be maintainable at his behest.

7. He submits that the parties in the suit proceedings had fraudulently entered into a compromise in which the petitioner was never a party nor was he made aware of the said compromise and accordingly the suit was decreed. He submits that he was a necessary party and ought to have been made a defendant in the suit proceedings, as a result of which judgment and order dated 22.03.2022, the disputed property has been demolished and the petitioner has not been heard by the trial court and accordingly submits that grave injustice has been meted out to him and accordingly prayed for setting aside of the impugned orders.

8. Learned Standing Counsel on the other hand has submitted that there is no infirmity in the impugned orders. He further submits that it is undisputed that the petitioner was not a defendant to the said suit nor did the suit proceed ex-parte and consequently the petitioner had no locus to file an application under Order 9 Rule 13 CPC for setting aside of the judgement and decree dated 12.03.2022. He submits that even if the petitioner was aggrieved by the judgement dated 12.03.2022, he has adequate remedy available to him under Code of Civil Procedure which he did not avail of and instead moved an application for setting aside of the ex-parte order.

9. Accordingly, he submits that neither was the petitioner able to satisfy the trial court with regard to delay in moving the said

application nor with regard to the maintainability and accordingly there is no infirmity in the impugned order and prayed for dismissal of the writ petition.

10. Before this Court also, the petitioner has reiterated the arguments raised before the trial court. He does not dispute the fact that he was not a party to the suit proceedings but submits that he falls in the category of a person aggrieved by the judgment and order dated 22.03.2022 and accordingly as per the legal opinion given, an application Order 9 Rule 13 CPC was preferred by him.

11. Before averting the merits of the controversy, it would be beneficial to go through the provisions of Order 9 Rule 13 CPC:-

"13. Setting aside decree ex-parte against defendant -- In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

Order 9 Rule 13 CPC (Allahabad High Court Amendment) :- Provided also that no such decree shall be set aside merely on the ground of irregularity in the service of summons if the court is satisfied that the defendant knew, or but for his wilful conduct would have known, of the date of hearing is sufficient time to enable him to appear and answer the plaintiff's claim."

12. A perusal of the aforesaid provisions clearly indicates that it is only where a decree has been passed ex-parte against a defendant, he may apply to the court for setting aside of the said decree. The use of word defendant in the said provisions makes it clear that it is only a defendant in the suit who has been granted a liberty to move an application under Order 9 Rule 13 CPC.

13. Further, Hon'ble the Supreme Court in the case of **Ram Prakas Agarwal Vs. Gopi Krishna. Civil Appeal No. 2798 of 2013**, held as under:-

"4. In Smt. Santosh Chopra v. Teja Singh & Anr., AIR 1977 Del 110, the Delhi High Court dealt with the issue with respect to whether a non-party/stranger has any locus standi to move an

application under Order IX Rule 13 CPC, to get an ex-parte decree set aside, he would be adversely affected by such decree. In the said case, the Rent Controller had held, that it would be patently unjust to bar any remedy for such a landlord, since the applicant was the assignee of the rights of the previous landlord, therefore, he could apply for setting aside of the decree as such. The Delhi High Court came to the conclusion that the statutory provisions of Order IX Rule 13 CPC itself, refer to the defendant in an action, who alone can move an application under Order IX Rule 13 CPC. Therefore, a person who is not a party, despite the fact that he might be interested in the suit, is not entitled to move an application under the rule. In fact he had no locus standi to have the order set aside. Such an order could not be passed even under Section 151 CPC. In view thereof, the order passed by the Rent Controller was reversed.

5. In Smt. Suraj Kumari v. District Judge, Mirzapur & Ors., AIR 1991 All 75, the Allahabad High Court dealt with a similar issue, and rejected the contention that at the instance of a stranger, a decree could be reopened in an application under Order IX Rule 13 read with Section 151 CPC, even if such decree is based on a compromise, or has been obtained by practising fraud upon the court, to the prejudice of the said stranger.

20. In view of the above, the legal issues involved herein, can be summarised as under:-

(i) An application under Order IX Rule 13 CPC cannot be filed by a person who was not initially a party to the proceedings;"

14. Apart from the above, the aforesaid judgments further clarifies that the person moving the application also satisfy the court that the summons were not duly served and that he was prevented by sufficient cause from appearing in the suit. The conditions so laid down in the aforesaid provisions with regard to service of summons would only apply in case the person moving an application being aggrieved by the ex-parte decree is a party in the said suit and only such a person can be issued notices and be served summons and the petitioner being a none party in the suit proceedings could not have been served summons, accordingly cannot satisfy the conditions laid down under Order 9 Rule 13 CPC.

15. Therefore, this Court is of the considered view that only a person who is a defendant in the suit proceedings can move an application under Order 9 Rule 13 CPC subject to the satisfaction to the conditions laid therein. Accordingly at the very threshold the petitioner was not entitled to move an

application under Order 9 Rule 13 CPC being not a party to the suit proceedings and therefore, there is no infirmity in the orders impugned whereby his application has been rejected. No other ground was urged by the petitioner before this Court, accordingly, the present writ petition is bereft of merits and is **dismissed**.

16. It is however provided that dismissal of the present writ petition shall not come in the way of the petitioner to instituting appropriate proceedings in case he is aggrieved by the judgment and decree dated 12.03.2022.

(Alok Mathur, J.)

Order Date :- 16.5.2024/Ravi/