

Reserved on: 4.3.2025

Delivered on: 7.3.2025

Court No. - 74

Case :- APPLICATION U/S 528 BNSS No. - 3980 of 2025

Applicant :- Yatendra Sharma

Opposite Party :- State Of U.P. And 4 Others

Counsel for Applicant :- Rishika Raj Singhal, Shivendra Raj Singhal

Counsel for Opposite Party :- Rajesh Mishra, Akshat

Sinha, G.A., Himanshu Pandey

Hon'ble Vikas Budhwar, J.

1. Heard Sri Shivendra Raj Singhal, learned counsel for the applicant, Sri Muniraj Mehrotra,, learned AGA for the State respondent, Sri Akshat Sinha, learned counsel for the respondents no. 2, 3 & 4 and Sri Rajesh Mishra, learned counsel for the opposite party no.5.

2. Learned counsel for the parties have made a joint statement at bar that they do not propose to file any affidavits and the application be decided on the basis of the documents available on record. With the consent of the parties, the application is being decided at the fresh stage.

3. The applicant herein has filed the present application u/s 528 of the B.N.S.S., 2023 seeking relief to an extent that a direction be issued to learned Additional District and Sessions Judge, Court no. 12, Ghaziabad to decide Civil Misc. Case No. 776 of 2024, Yatendra Sharma Vs Naresh Joshi and others under section 340 Cr.P.C. at first instance before proceed to decided the main proceeding, as expeditiously as possible within a stipulated period.

4. Learned counsel for the applicant submits that there happened to be a civil dispute pending between the applicant and opposite

parties wherein on 3.1.2023 the learned trial court had passed an order for restoring back the possession over the property in question to the applicant herein, against which a Criminal Revision No.4 of 2023 (Naresh Joshi and others vs. Yatiendra Singh) was filed before the court of Additional District and Sessions Judge, Court no. 12, Ghaziabad.

5. The applicant herein preferred an application under Section 340 of the Cr.P.C. before the revisional court, Additional District Judge 11th, Ghaziabad on 24.6.2024 which was registered as Criminal Misc. Case No. 776 of 2024. According to the learned counsel for the applicant the basic premise for filing the application under Section 340 of the Cr.P.C. that the revision was preferred by imposter/stranger having no concern and not by the revisionist-opposite party.

6. As per the applicant on 18.1.2025, the revisional court ordered for an expert report for verification of the signatures, however, without deciding the said application, the revisional court is proceeding with the revision.

7. Submission is that once on 18.1.2025 the revisional court has called for expert report and fixed 10.2.2025 in the misc. case arising out of application under Section 340 of the Cr.P.C. then it is not permissible for the revisional court to proceed with the hearing of the revision while fixing dates.

8. Learned counsel for the applicant submits that during the pendency of the said revision the original revisionist/opposite party has further transferred the property in question and an impleadment application had also been preferred in the pending revision.

9. Learned counsel for the applicant seeks to rely upon a decision of this Court in **Criminal Revision No.3760 of 2023, Amit Bajpai vs. State of U.P. & another** decided on 15.12.2023 so as to contend that it is imperative for the court below to first deal with an application

under Section 340 of the Cr.P.C. and then to proceed with the hearing of the main matter.

10. Learned AGA as well as Sri Akshat Sinha, learned counsel for the respondents no. 2, 3 & 4 and Sri Rajesh Mishra, learned counsel for the opposite party no.5 have countered submissions of the learned counsel for the applicant while contending that the purpose of filing of an application under Section 340 of the Cr.P.C. is nothing but a dilatory tactics just in order to defer the hearing of the revision which is not permissible under law. They further submit that there already happens to be an order dated 17.12.2024 in Civil Revision No.4 of 2023, according to which the revisional court bearing in mind the factum of filing of the proceedings under Sections 340 of the Cr.P.C. has itself taken a view that it shall be decided along with the main proceedings.

11. Reliance has also been placed upon the decision of the Hon'ble Supreme Court in the case of **Iqbal Singh Marwah and another vs. Meenakshi Marwah and another (2005) 4 SCC 370** and **Rugmini Ammal (Dead) by LRS. vs. V. Narayana Reddiar and others (2007) 12 SCC 611** so as to contend that it is not a matter of right to insist the court for decision of the application under Section 340 of the Cr.P.C. at the stage prior to the hearing of the revision as in the facts and the circumstances of the case it may be decided along with the main proceedings.

12. Learned counsel for the opposite parties submits that on 20.2.2025 itself the judgement has been reserved and the same is to be delivered on 4.3.2025 and thus the prayer made for deciding the Section 340 Cr.P.C. of the application cannot be granted.

13. I have heard learned counsel for the parties and perused the record.

14. The basic question which falls for consideration is whether in the facts and the circumstances of the case a direction can be issued for disposal of the application under Section 340 of the Cr.P.C. particularly when the judgement stood reserved on 20.2.2025 and the date of the delivery of the judgement is 4.3.2025. Apparently, there happens to be an order dated 18.1.2025 of the revisional court in the order sheet requiring the expert opinion of the signatures of the revisionist from an expert while fixing on 10.2.2025.

15. Once the judgement stood reserved on 20.2.2025 in the civil revision then this Court cannot assume that the Section 340 of the Cr.P.C. application would not be dealt with. It is not a case wherein the revisional court has not noticed or ignored the said application while not passing an order, as rather to the contrary on 18.1.2025 there happens to be an asking for a expert report, thus, it is apparent that the Court is seized of the said issue also. So far as the reliance so placed upon the judgement in the case of **Amit Bajpai (Supra)** there is no quarrel to the said proposition.

16. This Court is not delving into the said issue since Court is/was already seized of the matter and the judgement itself has been reserved on 20.2.2025 as stated by the learned counsel for the opposite parties which has not been disputed by learned counsel for applicant on being specifically asked that the judgement is to be delivered on 4.3.2024.

17. Accordingly, in view of the facts and circumstances of the case, no order is being required to be passed in the present application.

18. In view of above, the present Application under Section 528 B.N.S.S. stands **rejected**. It is always open for the applicant to take appropriate legal proceedings as advisable and permissible in law taking all legal and tenable grounds before the appropriate forum.

Order dated:- 7.3.2025/piyush