

Court No. - 6

A.F.R.

Case :- MATTERS UNDER ARTICLE 227 No. - 3265 of 2022

Petitioner :- Smt. Rajani

Respondent :- Vipul Mittal And 4 Others

**Counsel for Petitioner :- Anil Kumar Aditya,Radhey Shyam
Dwivedi**

Counsel for Respondent :- Shreya Gupta,Ravi Anand Agarwal

Hon'ble J.J. Munir,J.

This petition is directed against the order dated 13.04.2022 passed by the Additional District Judge, Court No. 5/Special Judge (U.P. Gangsters and Anti-social Activities (Prevention) Act, 1986) Muzaffarnagar, dismissing Civil Revision No. 18 of 2022 and affirming an order dated 07.03.2022 passed by the Civil Judge (Senior Division) Fast Track Court, Muzaffarnagar in Original Suit No. 372 of 2013, rejecting the petitioner's application 85C seeking to recall orders dated 26.10.2021 and 14.12.2021.

2. By the order dated 26.10.2021, an application for adjournment by the defendant has been rejected and his opportunity to cross-examine P.W.1 closed. The suit was directed to come up for arguments. By the order dated 14.12.2021, in the absence of the defendant, the suit was directed to come up for arguments *ex-parte* on 03.01.2022. A perusal of the record shows that Original Suit No. 372 of 2013 was filed by Vipul Mittal against Yogendra Kumar Garg before the Court of the Civil Judge (Senior Division), Muzaffarnagar for partition of his half share in House No. 212/1, situate at Mohalla Civil Lines, West, Muzaffarnagar, detailed in Schedule A to the plaint. The plaintiff sought a decree in terms that after the determination of his share, the suit property be

partitioned by metes and bounds and separate possession delivered to him. A decree for permanent injunction was also sought to the effect that the defendants, prior to the partition being effected, may not mortgage the suit property or alter the nature and character of the house in dispute. The original defendant to the suit, Yogendra Kumar Garg, appears to have passed away pending suit and was substituted by his heirs and L.Rs., numbering five, and arrayed as defendant nos. 1/1 to 1/5 to the suit. The suit is one of the year 2013. The suit has proceeded to trial and it appears that the plaintiff had filed his evidence on affidavit and 16.10.2021 was the date scheduled for cross-examination of P.W.1. On the said date, the Counsel for the defendant made an application for adjournment, which was opposed by the plaintiff. The application for adjournment was rejected and opportunity to cross-examine P.W.1 was closed. The suit was directed to come up for arguments on 09.11.2021. On 09.11.2021, 17.11.2021 and 01.12.2021, the suit was adjourned eventlessly. It was adjourned on 09.11.2021 because the Presiding Officer was on leave, but the parties were also absent. On 17.11.2021, it was adjourned because the learned Members of the Bar had abstained from judicial work. Again, on 01.12.2021, the case was adjourned because the Presiding Officer was on leave. On 01.12.2021, it was adjourned to 14.12.2021. On 14.12.2021, when the suit came up for arguments, the Counsel for the plaintiff was present, but no one appeared on behalf of the defendant. It was in those circumstances that the Trial Court directed that the suit may come up for arguments *ex-parte* on 03.01.2022. In the said order, it was recorded that the Bar Association has proposed no work from 17.12.2021, due to elections of the Bar.

3. By the application dated 04.01.2022, the defendant has sought recall of the order dated 14.12.2021 that directs the suit to come up for address of arguments *ex-parte*. This application bears Paper No. 85C. By the other application dated 07.03.2022, the defendant has sought recall of the order dated 26.10.2021 that has closed the defendant's opportunity to cross-examine P.W.1 and once again asked for recall of the order dated 14.12.2021, setting down the suit for address of arguments *ex-parte*. It is these applications that the Trial Judge has rejected *vide* his order dated 07.03.2022.

4. Heard Mr. Anil Kumar Aditya, learned Counsel for the petitioner in support of the motion to admit this petition to hearing and Ms. Shreya Gupta, learned Counsel appearing for the plaintiff-respondents at length. The records have been carefully perused.

5. The impugned order passed by the Trial Judge shows that he has rejected the Application 85C seeking recall of the order dated 14.12.2021 alone, that is to say, the application dated 04.01.2022 on the ground that there is no order dated 14.12.2021. That remark or reason to reject by the Trial Court is not borne out from the record. There is definitely an order dated 14.12.2021 passed by the Trial Court, directing the suit to come up for address of arguments *ex-parte*. So far as the other application is concerned, the Trial Court has dismissed it on the ground that the order dated 14.12.2021 is non-existent and the order dated 26.10.2021 ought not to be recalled, because the defendant is merely trying to delay the trial. It has also been remarked that the Application 85C (the application dated 07.03.2022 that seeks recall of both orders dated 26.10.2021 and 14.12.2021) is not supported by an affidavit. It is for the reason that Application 89C has been rejected. The Revisional Court has upheld the orders impugned on the ground

that both the applications 85C and 89C have been made much beyond limitation, without an application or prayer for condonation of delay; but, this is one facet of the reasoning that the Revisional Court has adopted. The Revisional Court has looked wholesomely into the record to arrive at a conclusion that the defendant is attempting to delay trial of the suit, which has been expedited under orders of this Court dated 14.09.2018 passed in some supervisory proceedings. It appears that there is some order of this Court, directing the suit to be decided within two years and that schedule was violated because of the dilatory tactics adopted by the defendant. It is bearing all these facts in mind that the Revisional Court has declined to interfere with the orders made by the learned Trial Judge.

6. This Court has carefully looked into the order-sheet. It must be remarked that indeed, there have been determined efforts to delay trial of the suit. On 08.01.2021, the plaintiff's evidence on affidavit was accepted and the suit was scheduled for cross-examination of P.W.on 28.01.2021. From 28.01.2021 to 26.10.2021, 18 dates were fixed prior to 26.10.2021, but for one reason or the other, the defendant did not cross examine P.W.1. The Trial Judge in between 28.01.2021 and 26.10.2021 has taken note of the orders of this Court in the order recorded on 02.08.2021, saying that the High Court has issued directions for concluding the trial within two years, and further, that the suit has been assigned to him by the District Judge. It is not that the order dated 26.10.2021, closing the defendant's opportunity has been passed surreptitiously or suddenly. The defendant has been given enough opportunity by the orders passed by the Trial Court on earlier dates, and also, by all those ominous resolutions of the Bar, directing its members to abstain from judicial work. It must be

remarked that Resolutions of the Bar, asking its Members to abstain from judicial work, are absolutely unlawful, in view of the directions of the Supreme Court in **Ex-Capt. Harish Uppal v. Union of India and another¹, Common Cause, a registered society and others v. Union of India and others², Krishnakant Tamrakar v. State of Madhya Pradesh, (2018) 17 SCC 27³ and District Bar Association, Dehradun through its Secretary v. Ishwar Shandilya and others⁴**. Such resolutions being *per se* illegal, no litigant can derive any advantage out of these. The orders passed on 01.09.2021, 13.09.2021, 14.09.2021, 08.10.2021 and 26.10.2021 must be taken particular note of, as these immediately preceded the order dated 26.10.2021 passed by the learned Trial Judge. These orders are extracted below :

01.09.2021

Called out.

Pf. did not turn up.

Counsel on behalf of the df. Present and filed adjournment 82D stating that O.S. 982/10 is a connected case and is pending in the Court of Civil Judge S.D. df. are trying to get the connected case transferred to one Court. Hence adjournment is moved.

Application allowed in interest of justice.

Put up on 13-09-2021.

13-09-2021

Called out.

None present.

Proposal of Bar to abstain from judicial work.

Hon'ble H.C. has pass direction to dispose off the case within 2 years. Even on repeated requests to the counsels, no sides are appearing.

In the interest of justice, last opportunity is granted to parties. Put up on 24-09-2021.

1 (2003) 2 SCC 45
2 (2006) 9 SCC 295
3 (2018) 17 SCC 27
4 (2020) 17 SCC 672

24.09.2021

पुकार करायी। पक्षकार अनुपस्थित। अधिगण कार्य से विरत है। पत्रावली मा० उच्च न्यायालय द्वारा दिशा निर्देशीत है। पक्षकारों को अंतिम अवसर दिया जाता है वाद वास्ते F.O. दिनांक 08.10.2021 को पेश हो।

ह० अ०/-

08.10.2021

पुकार करायी गयी। स्थगन प्रतिवादी 83 घ स्वीकृत। वाद वास्ते F.O. दिनांक 20.10.2021 को पेश हो।

ह० अ०/-

20.10.2021

पुकार करायी। वादी उपस्थित। अधिगण कार्य से विरत है। वाद वास्ते F.O. / जिरह दिनांक 26.10.2021 को पेश हो।

ह० अ०/-

7. This Court takes particular notice of the order dated 13.09.2021, where the learned Trial Judge has observed that the High Court has directed the suit to be decided within two years, but despite repeated requests to the learned Counsel, no one is appearing. This was so because the Bar had abstained from judicial work. This conduct of the Bar is not only reprehensible, but also downright illegal. The Bar Association is, after all, a registered society and cannot hold up the functioning of a Sovereign Court by their resolutions. Whatever they do, they do it at the peril of the litigants whose interest their Members represent. If the learned Counsel refuse to appear and so do the parties, the Court is supposed to pass orders in accordance with the Code of Civil Procedure, 1908 that provides for orders to be made when parties, both or one, are absent. The impugned order passed on 26.10.2021, which follows the order dated 10.10.2021 recorded hereinabove, reads :

26.10.2021

Called out.

Pf. along with Counsel present.

Counsel of Df. filed an adjournment 84D which is strongly opposed by pf.

On perusal it is observed that df. is continuously delaying the case by not turning up. In the light of conduct of df., opportunity to cross examine PW1 is closed. Adjournment rejected.

Put up on 09/11/2021 for argument.

8. The other order of which recall was sought is the one dated 14.12.2021. It reads :

14.12.2021

Called out.

Counsel on behalf of pf. present.

Df. did not turn up.

Put up on 03-01-2022 for ex-parte arguments, as BAR proposed no work from 17-12-2021 due to elections of BAR.

9. Again on 14.12.2021, the Members of the Bar abstained from judicial work, because Bar Elections were going on. It is beyond imagination that the work of a Court would be brought to a grinding halt, because the elections of a registered society are to be held. No doubt, learned Members of the Bar are superior officers of the Court, but the Bar Association is no more than a registered society established for the welfare of the learned Members of the Bar and to positively contribute to the functioning of its individual Members. The Bar Association is not established to obstruct functioning of the Court and interfere with the discharge of its sovereign functions. The Trial Court was, therefore, absolutely right when it made the order dated 14.12.2021, directing the suit to come up for address of arguments *ex-parte*.

10. It must be noted that on 14.12.2021, learned Counsel for the plaintiff was present. Had the learned Counsel for the plaintiff not been present on 14.12.2021, the Trial Court would have dismissed the suit in default also. But, it was the defendant's Counsel alone who was absent and not the plaintiff. The order dated 14.12.2021,

like the order dated 26.10.2021, is unexceptionable. It must be noted that on 26.10.2021 also, the plaintiff, along with his Counsel, was present. The Revisional Court has upheld the order on the ground of limitation, besides taking the conduct of the defendant into account, though not eloquently said in the order impugned passed by the learned Additional District Judge.

11. For the added reasons mentioned, this Court concurs in the conclusion reached by the two Courts below unanimously.

12. In the result, this petition **fails** and stands **dismissed**.

13. There shall, however, be no order as to costs.

14. The Registrar General is directed to circulate this order to all the learned District Judges, the Presiding Officers of Land Acquisition, Rehabilitation and Resettlement Tribunals, the Principal Judges of Family Courts, the Presiding Officers of Motor Accident Claim Tribunals and the Chairman, Board of Revenue.

Order Date :- May 19, 2022

I. Batabyal / Anoop

(J.J. Munir, J.)