

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 11864 of 2023

Petitioner :- Smt. Sharda Singh

Respondent :- Yashpal And 2 Others

Counsel for Petitioner :- Ram Chandra Uttam

Hon'ble Ashutosh Srivastava,J.

Heard Shri Ram Chandra Uttam, learned counsel for the petitioner.

Considering the nature of the order that is proposed to be passed the notice upon the respondent Nos. 1 to 3 is being dispensed with.

The instant petition under Article 227 of the Constitution of India has been instituted to direct the learned Civil Judge (Junior Division) 6th Mathura to proceed with and decide the Original Suit No. 578 of 2022 (Sharda Singh Vs. Yashpal Singh and others) pending before it expeditiously within a time frame fixed by the Court.

It is the case of the petitioner that she is a widow lady of 79 years of age. Her late husband Colonel Suryopal Singh (retired) has bequeath a House bearing No. 1/170-A, area 500 square ft. situate at Brij Ganga Residency-9, Civil Lines, Mathura under a registered Will dated 24.06.2016. The respondents herein who are the sons and daughters of the petitioner have also been Willed a flat each under the registered Will aforesaid. All the contesting parties are in possession of there respective properties. The eldest son of the petitioner namely Chetan Kumar Singh is residing with her. The respondent no. 1 was permitted to reside in the house of the petitioner but now he has shown no intention to vacate the same. The other respondents are all intending to grab the house of the petitioner which has come under her share under the registered Will dated 24.06.2016 of her late husband.

The petitioner under such circumstances has instituted the Suit No. 578 of 2022 (Sharda Singh vs. Yashpal Singh and others) seeking the relief of permanent injunction restraining the respondents from interfering in her peaceful possession and for eviction of the respondent no. 1 from Suit property. The respondents have put in appearance and filed their Written Statement. The petitioner has filed her Replica.

Learned counsel for the petitioner submits that the petitioner is a Senior Citizen of 79 years of age and is suffering from various old age related diseases and is on a Wheel Chair. The petitioner has moved the learned Civil Judge (Junior Division)

6th, Mathura, seized with the Suit Proceedings to expedite the same which application is pending consideration. Learned counsel has invited the attention of this Court to the order sheet of the Suit Proceedings to demonstrate that the Trial Court is proceedings in a very slow pace and considering the plight of the petitioner and her old age the Suit Proceedings are liable to be expedited.

This Court has considered the submissions of the learned Counsel for the petitioner and has perused the records. From the perusal of the order sheet filed on record as Annexure -5 of the writ petition it is borne out that the suit is pending at the stage of framing of issues. The last date 07.11.2023 was fixed for consideration of the application of the petitioner (16-C) for expeditious disposal of the Suit.

The Division Bench of this Court in case of ***Ali Shad Usmani vs. Ali Isteba, 2015 (2) ADJ 250 (DB)*** has held that no direction can be issued to the sub-ordinate courts for deciding the suit within stipulated period. Relevant portion of the judgment is extracted hereunder:-

"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.

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."

An earlier Division Bench of this Court in the Case of ***Km. Shobha Bose V. Judge Small Causes & Ors.*** reported in ***2011 (88) ALR 850***, has held that the power to direct expeditious disposal of Suit or any other Cases should be exercised sparingly in extra ordinary circumstances and not in a routine manner. Relevant portion of the judgment is extracted hereunder:-

"3. 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 directions 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 oblivion 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.

4. We hasten to add that even in such kind of cases, ordinarily this Court would relegate the petitioner to the remedy before the Court in seisin of the lis to take appropriate decision, as it is that Court which can consider the matter in totality of the circumstances."

In view of the above, this Court is not inclined to grant the relief prayed for by the petitioner at this stage. However, the Court finds that the petitioner has already moved the Court below by moving an application (Paper No. 16-C) for expeditious disposal of the suit proceedings taking into consideration that the petitioner is a Senior Citizen of 79 years of age. In the opinion of the Court the petitioner can be disposed off by requiring the Court to pass suitable orders thereon.

Accordingly, the petition is disposed off by requiring the Civil Judge (Junior Division), 6th Mathura, seized with the Application for expeditious disposal (16-C) to consider and pass appropriate orders thereon on the next date fixed in the suit or within a reasonable time.

Order Date :- 23.11.2023

Deepak/