

Court No. - 18

Case :- MATTERS UNDER ARTICLE 227 No. - 10301 of 2022

Petitioner :- Asheem Kumar Das

Respondent :- Manish Viswas And 4 Others

Counsel for Petitioner :- Tejas Singh, Ajay Kumar Singh, Ashish Kumar Singh

Hon'ble Ajit Kumar, J.

Supplementary affidavit filed today by learned counsel for the petitioner is taken on record.

Heard Sri Tejas Singh, learned counsel for the petitioner.

This miscellaneous petition is directed against the order passed by the District Judge, Varanasi dated 12.10.2022 and 1.11.2022 in a defective revision, being barred by time, registered as Misc. Case No.213 of 2022.

It is submitted by learned counsel for the petitioner that while the summons were still not served and the revision-applicant was directed to do pairvi vide order dated 22.8.2022 and on 26.8.2022 which was the next date fixed the matter could not be taken up as the lawyers were abstaining from work and on 7.9.2022, the next date, the presiding officer himself was busy in some administrative work. It is in the close background that the District Judge proceeded to pass order on 12.10.2022 summoning the record of the execution case instead of record of the suit.

On 13.10.2022, the opposite party appeared in revision-application and date was fixed as 14.10.2022 but on the said date again the lawyer abstained from work so matter could not be taken up. The objection was filed bearing paper no.25C alongwith 26 C by the petitioner-landlord objecting to the miscellaneous Stay Application. On the next date that is on 17.10.2022 the revision-applicant filed his reply to the objection and 17.11.2022 was fixed. However, even prior to this date, it appears case was taken up on 1.11.2022 and that too without assigning any special reason for recalling the file and further summoning the executing court's order i.e. Parwana.

How the case has been advanced by two weeks to pass the order is not reflected from the ordersheet. It is well settled that unless and until Section 5 application is allowed neither the appeal nor the revision can be held to be competent one.

I am reminded that the same District Judge, Varanasi had earlier committed similar mistake by admitting one revision petition without condoning delay under Section 5 of the Limitation Act and when the matter was filed before this Court under Article 227 No.7629 of 2021 and the report was summoned, the District Judge submitted a report that it had happened due to oversight. Court took lineant view in the matter and refrained from referring the matter of judicial conduct on administrative side. This matter was disposed of by this Court on 18.10.2022.

In the present case, the ordersheet reflects that the District Judge, Varanasi is in the habit of committing impropriety in discharge of his judicial function.

District Judge, Varanasi is directed to appear before this Court on the next date fixed alongwith the original record of the case.

In the meanwhile until further order of this Court, the orders dated 12.10.2022 and 1.11.2022 passed by the District Judge, Varanasi in Misc. Case No.213 of 2022 shall remain stayed.

Put up this matter in Chamber at 10 AM on 28.11.2022.

Order Date :- 21.11.2022

Deepika