

In Chamber

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.

In compliance of my earlier order dated 21st November, 2022, entire lower court record in Misc. Case No.- 213 of 2022 (Manish Viswas and others v. Asheem Kumar Das) has been placed before me. The record includes file of defective Small Causes Revision (SCC Revision) in which Section 5 application of the Indian Limitation Act, 1963, seeking condonation of delay has yet not been allowed.

Dr. Ajaya Krishna Vishvesha, District Judge, Varansi is present to assist the Court in the matter of compliance.

Sri Ajay Kumar Singh and Sri Tejas Singh, learned counsel for the petitioner are also present.

The controversy has traveled to this Court on account of two orders passed by the District Judge in Misc. Case No.- 213 of 2022 on 12th October, 2022 and 1st October, 2022.

To put the record straight the order sheet of the misc. case discloses that record of execution case was summoned on 12th October, 2022 fixing 13th October, 2022.

Both the parties had appeared but then it appears that respondent in revision was supplied with necessary copies and case was listed on 14th October, 2022 when it could not be heard as lawyers were abstaining from work and next date fixed was 17th October, 2022. On 17th October, 2022 the revision applicant filed objection to the objection of the present petitioner which was marked as Paper No.- 26-C fixing 17th November, 2022. While the matter was fixed on 17th November, 2022, an urgent misc. stay application was filed on 1st November, 2022 with averments that entire records of execution court had not been sent to the court sitting in revision and the respondent landlord was threatening the revision applicants to dispossess them by use of police force and, therefore, a request was made that the order i.e. Parvana Bedhakhali issued by the executing court may also be called

for. Upon this application there is a note on the margin by one Mr. Rathi Advocate that opposite party's counsel refused to accept the notice. Thus, upon this application the court passed an order on the same date calling for Parvana Badhakhali back noting down the averments made and file was directed to be placed on the date fixed i.e. 17th November, 2022.

On 17th November, 2022 the present petitioner moved an application being Paper No. 31-C with the prayer that copy of the application urgently filed on 1st November, 2022 be supplied to him.

Thus, these two orders passed by the Court on 12th October, 2022 and 1st November, 2022 have been challenged before this Court.

The District Judge, Varanasi with humility submitted to the Court that intention was only to ensure that SCC revision may not get frustrated only because of the pendency of Section 5 application under Indian Limitation Act, 1963 and so in order to do justice, he summoned the parvana bedhakhali.

Dr. Ajaya Krishna Vishvesha, the learned District Judge submitted that any irregularity in procedure if happened by calling record and passing the interim order on 1st November, 2022 was not to prejudice the interest of the petitioner but an act done in good faith and with the *bona fide* intention instead. He submits that after this Court intervened in the matter by the order dated 21st November, 2022, he has passed a detailed order on 25th November, 2022 sending back the record of the execution case as well as parvana bedhakhali.

Looking to the records as placed before me and what has been submitted by the District Judge, Varanasi, I find no reason to doubt his *bona fides* in the matter but the fact remains as far as the legal position is concerned that Section 5 application seeking condonation of delay in filing revision has yet not been disposed of and so on the date of order dated 1st November, 2022 the SCC revision was a defective one and, therefore, the proper course ought to have been for the Court to dispose of Section 5 application first and then to proceed accordingly.

Although the rule of procedure as prescribed under Order XLI Rule 3-A of the Code of Civil Procedure, 1908 provides that in the event a time barred appeal is filed and Section 5 application is pending consideration, the court shall not stay execution of the decree appealed against so long it does not hear the appeal under Rule 11 and this principle if is applied to revision petitions but in my considered view there may be cases at times

where interest of justice may demand the court to interfere by passing appropriate stay order so that proceeding of revision may not get frustrated for technicalities of delay in filing such revision petitions. For instance in the case in hand the revision petition was just barred by one month and few days as decree was passed on 28th March, 2022 and the revision was filed on 7th May, 2022. Nothing restrained the Court from deciding the Section 5 application.

Now, at this stage when the District Judge under his order dated 25th November, 2022 has sent back the file to the executing court and so also the order i.e. parvana bedhakhali, no grievance is left in the matter to be raised by the petitioner.

In the circumstances and as observed above, Dr. Ajaya Krishna Vishvesha, the District Judge, Varanasi, stands honourably discharged from notice and the observations made in last fourth paragraph of my order dated 21st November, 2022 regarding his conduct, stand expunged.

At this stage, exercising my supervisory jurisdiction under Article 227 of the Constitution, I direct the court concerned to decide Section 5 application seeking condonation of delay in filing pending in SCC (Defective) Revision before it on 5th December, 2022 without granting any adjournment to either of the parties and thereafter will proceed accordingly as per the order passed.

Sri Ajay Kumar Singh, learned counsel appearing for the petitioner gives an undertaking on behalf of the petitioner that petitioner will not pursue the execution case until 5th December, 2022.

It is also observed that Section 5 application for condonation of delay pending in SCC (Defective) Revision shall be decided on its own merit by the court without being influenced by any observations made herein this order.

Original records produced before this Court are returned.

With the aforesaid observations and directions, this petition stands disposed of.

Order Date :- 28.11.2022

Atmesh