

(2011) 03 AHC CK 0212

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No.47327 of 2002

Ashok Gautam & others

APPELLANT

Vs

Special Judge, E.G.Act & others

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Provincial Small Cause Courts Act, 1887 — Section 18

Citation : (2011) 03 AHC CK 0212

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.

Heard learned counsel for the parties and perused the record.

2. By order dated 4.12.2006, this Court had passed the following ad interim order:

Order on Civil Misc. (Modification) Application

No. 179787 of 2003.

"The aforesaid Writ Petition was considered by me as a fresh case on 12.11.2002, and the following order dated 12.11.2002 was passed:

"Issue notice pending admission. Notice in respect of the respondent No.1 will be served in the office of the Chief Standing Counsel within one week.

Sri Manoj Kumar Gupta has filed his Vakalatnama on behalf of respondents nos. 2 and 3, therefore, notices need not go to the respondents. Sri Manoj Kumar Gupta prays for and is granted two weeks time to file counter affidavit. Petitioners will have two weeks thereafter to file rejoinder affidavit.

List this case for admission in the week commencing 16th December, 2002.

Connect with writ petition No. 26817 of 1998.

Heard on the question of grant of interim relief. Having considered the facts and circumstances of the case and submissions made by the learned counsel for the parties, it is directed that the operation of the judgment and order dated 11.10.2002 (Annexure 17 to the writ petition) passed by the learned Special Judge (E.C. Act)/Additional District Judge, Aligarh will remain stayed until further orders of this Court, provided the petitioners deposit the entire decretal amount with rent/damages upto November, 2002 within two months from today. Rent/damages for the month of December, 2002 and onwards will be deposited by 7th of each succeeding month. The deposits so made by the petitioners may be withdrawn by the respondents nos. 2 and 3 without furnishing any security. In case of default in compliance with aforesaid condition the interim stay order will stand automatically vacated.

It is made clear that proceeding in S.C.C. No. 112 of 1992 are not being stayed."

The aforesaid Modification Application has been filed on behalf of the respondents nos. 2 and 3, inter alia, praying for modification of the said order dated 12.11.2002.

As noted above, the said order dated 12.11.2002 was passed by me while considering the Writ Petition as a fresh case. Therefore, any Application at the instance of the contesting respondents seeking vacation/modification of the said order dated 12.11.2002 will lie before the appropriate Bench dealing with the Writ Petitions of the nature of the present Writ Petition.

Reference in this regard may be made to Rules 14 and 15 of Chapter V of the Rules of the Court, which deal with tied up cases. The said Rules 14 and 15 are as under:

"14. Tied up cases.(1) A case partly heard by a Bench shall ordinarily be laid before the same Bench for disposal. A case in which a Bench has merely directed notice to issue to the opposite party or passed an ex parte order shall not be deemed to be a case partly heard by such Bench.

(2) When a criminal revision has been admitted on the question of severity of sentence only, it shall ordinarily be heard by the Bench admitting it.

15. Application in a tied up case. Any application in case which may under the next preceding Rule be heard by a particular Bench shall ordinarily be heard by such Bench."

Thus, Subrule (1) of the above quoted Rule 14 provides that a case partly heard by a Bench shall ordinarily be laid before the same Bench for disposal. However, a case in which a Bench has merely directed notice to issue to the opposite party or passed an ex parte order, shall not be deemed to be a case partly heard by such Bench.

Therefore, if a Bench has merely directed notice to issue to the opposite party or

passed an ex parte order in a case, then such a case shall not be deemed to be a case partly heard by such Bench, and as such, the said case will not be deemed to be tied up with such Bench.

A perusal of the said order dated 12.11.2002 passed in the present case shows that by the said order, the Court, inter alia, directed for issuance of notice on the Writ Petition pending admission.

Notice in respect of the respondent no.1 was directed to be served in the Office of the learned Chief Standing Counsel within one week. Further, notice in respect of the respondents nos. 2 and 3 was received by Shri Manoj Kumar Gupta, who filed his Vakalatnama on behalf of the said respondents, and, therefore, it was directed that notices need not go to the said respondents.

Hence, the said order dated 12.11.2002 was an order directing for issuance of notices to the respondents in the Writ Petition, as mentioned in Subrule (1) of Rule 14 of Chapter V of the Rules of the Court.

Further, while it is true that the interim order, as contained in the said order dated 12.11.2002, was passed after considering the submissions made by the learned counsel for the parties, namely, the learned counsel for the petitioners and the learned counsel for the respondents nos. 2 and 3, but the said interim order was nevertheless an ex parte order in the sense that the same was passed on the basis of the averments made in the Writ Petition and the Annexures filed with the Writ Petition, and the version of the respondents nos. 2 and 3 by means of proper affidavit was yet to be brought before the Court for which two weeks' time was granted to the learned counsel for the respondents nos. 2 and 3.

Evidently, therefore, the case would not be deemed to be a case partly heard by me, and the same is not tied up with me in view of the provisions of Subrule (1) of Rule 14 of Chapter V of the Rules of the Court.

Consequently, Rule 15 of Chapter V of the Rules of the Court will not apply in respect of the aforesaid Modification Application.

In view of the above discussion, it is directed that the aforesaid Civil Misc. (Modification) Application No. 179787 of 2003 be listed before the appropriate Bench dealing with the Writ Petitions of the nature of the present Writ Petition."

3. Today, this case has been heard on Civil Misc. Modification Application No. 179787 of 2003.

4. It appears from the record that proceedings before the court below have been stayed by the aforesaid order dated 4.12.2006.

5. Learned counsel for the respondent has submitted that due to stay order respondent/landlord is suffering hardship.

6. The contention of learned counsel for the petitioner is that his interest may be protected by passing appropriate order.

7. In the circumstances, it is directed that proceedings before the court below may take place, but final order shall not be passed. In the meantime, respondent no. 3 landlord may move an application before the court below for withdrawal of the amount of rent/damages deposited by the tenant. The said application shall be decided by the concerned authority within a period of two months from the date on which it is moved by a reasoned order in accordance with law.

8. Admit.

9. List for hearing after three months.