
(2012) 05 AHC CK 0324
In the Allahabad High Court
Case No : C.M.W.P. No. 24117 of 2012

Basudev

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 21-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 5 AWC 5120

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Vishwa Pratap Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—The only relief sought by the petitioner in this writ petition is that so long as his application dated 31.3.2012 filed before Motor Accident Claims Tribunal seeking stay of recovery proceedings pursuant to the award dated 1.11.2011 in M.A.C.P. No. 767 of 2010 is not disposed of, the aforesaid recovery be stayed by this Court. In effect this writ petition is only confined to a temporary stay order till the petitioner's stay application pending before the court below is disposed of. It is a thoroughly misconceived prayer and in my view is not entertainable under Article 226 of the Constitution of India.

2. It is evident that on petitioner's aforesaid stay application, the court below has already issued notice to the respondents fixing 30.5.2012 inviting objections and for disposal on priority basis. Whether an interim order should be granted in favour of petitioner is a matter yet to be decided by the court below which is seized of the matter. Any observation, if made by this Court or such an order if granted by this Court, that will amount to prejudge the issue and influence the court below in exercising its jurisdiction on petitioner's stay application in a particular manner. The Court can take judicial notice of the fact that if this Court passes an order granting an interim relief in a particular manner, an application pending for interim relief before the court below in all likelihood has to follow the

same course. It would be extremely and practically difficult for the court below to take a view otherwise. Moreover, no writ petition lie only for the purpose of a stay order. The petitioner has sought a writ of mandamus, i.e., to grant only a stay order as the final relief till disposal of his application before the court below. Though it is true that In the writ petition the petitioner has referred to disposal of his application filed under Order IX, Rule 13 seeking recall of the award in M.A.C.P. No. 767 of 2010 but the identical application admittedly is already pending before the court below and the matter is seized thereat.

3. Such a mandamus is not a matter of right. Learned counsel for the petitioner could neither show any legal right vested in him to get such an interim order nor the court below is under an obligation to pass an order on petitioner's application in a particular manner. The relief of mandamus in the manner sought by the petitioner is thoroughly misconceived.

4. Learned counsel for the petitioner drew my attention to some short orders passed by this Court granting such an interim order but a perusal thereof shows that this Court has not at all considered any issue, raised, argued and decided and has simply disposed of the writ petition by granting an indulgence without considering whether such a mandamus can be granted also without considering whether such a mandamus in law is permissible or not. The aforesaid order(s), therefore, do not constitute a binding precedent upon this Court to issue a mandamus, as sought in this writ petition. In order to constitute a binding precedent an issue must be shown to have been raised, argued and decided. It is not what has been done by the Court which is binding on the coordinate Bench but it is the law laid down in a Judgment which is binding. Something done as a matter of fact in a particular case without considering any legal issue as such would not bind the Court to pass similar order without considering legal permissibility of such an order.

5. In the present case, I have no hesitation in holding that direction sought by the petitioner is legally impermissible and a writ petition for this purpose is not maintainable. Dismissed.