
(2014) 09 AHC CK 0142
In the Allahabad High Court
Case No : Writ-B No. 50605 of 2014

Kila Begum

APPELLANT

Vs

D.D.C.

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Citation : (2014) 125 RD 455

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : Manu Khare, Advocate for the Appellant

Judgement

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Anjani Kumar Mishra, J.—It has been stated by Sri Manu Khare, learned Counsel for the petitioner, that in title proceedings, against the order passed by the Consolidation Officer, an appeal was preferred. The appeal was decided by the order dated 12.2.2014. The next day on 13.2.2014, the contesting respondents are said to have filed a restoration application, alleging therein that the order dated 12.2.2014 was ex parte and had been passed without hearing them. The Settlement Officer, Consolidation on 15.2.2014 granted an interim order on the restoration application filed by the contesting respondents. This interim order was challenged by means of a revision, which has been dismissed by the impugned order. Submission of learned Counsel for the petitioner is that once the Settlement Officer, Consolidation had decided the appeal, he becomes functus officio and no order could have been passed, till such time the restoration application itself was allowed. The second submission of learned Counsel for the petitioner is that no reason has been assigned while granting the interim order. The third submission of learned Counsel for the petitioner is that the Deputy Director of Consolidation has failed to address all the points that were raised by the petitioner before the revisional Court.

2. Learned Counsel for the petitioner has relied upon the following three

judgments:--

1. Jagdhari and others Vs. Vth Addl. District Judge, Azamgarh and another, .

2. Thressia @ Kochu Thressia Vs. Vareetha .

3. Mr. Rajesh Jain Vs. Sh. Devender Kumar Saigal and Others .

3. Perusal of the judgments cited reveals that the judgments of the Kerala and the Delhi High Courts have been passed placing reliance on the judgment of this Court in the case of Jagdhari (supra).

The facts of the case are that in a suit for permanent injunction, the Trial Court granted interim injunction. The suit was dismissed for default. The restoration application was filed for setting aside the order for dismissal for default. The Trial Court declined to grant temporary injunction, which order was affirmed in appeal holding that since the suit had been dismissed for default, no temporary injunction could be granted unless the suit is restored.

4. Since the other two judgments cited, follow the ratio laid down in the case of Jagdhari (supra), the same are not being dealt with in detail.

5. Relevant portion of paragraph 4 of the judgment in case of Jagdhari (supra) relied upon by the learned Counsel for the petitioner, is quoted below:--

"In my opinion, the impugned orders are correct and call for no interference. Once the suit is dismissed, whether for default or otherwise, all interim orders came to an end. Since there is no suit pending at present, hence there is no question of grant of any interim injunction."

6. The facts in the instant case are different. In the instant case, the appeal was filed by the petitioner. The allegation in the restoration application is that the order is ex parte. In case the submission of learned Counsel for the petitioner is accepted that once a Court passes a final order, it become functus officio, no recall application can be entertained by it. This can never be the case. Every Court has jurisdiction to recall an order, which has been passed ex parte and it is, therefore, clear that the interim order, which has been granted merely stays the operation of an order, which is said to be ex parte against the person, who filed the restoration application. The interim order has been granted not in the appeal but in the restoration application and I see no illegality in the same. The facts of the case relied upon by the learned Counsel for the petitioner are clearly distinguishable. Submissions made by learned Counsel for the petitioner lack force.

7. Since the submissions of the learned Counsel for the petitioner have been found to be without force and the judgments relied upon by him is clearly distinguishable, no useful purpose is going to be served by remanding the matter to the Deputy Director of Consolidation for passing fresh order considering all the submissions that may have been raised before him, interest of justice would be served in case restoration application is disposed of expeditiously.

8. Accordingly, I find no merit in the writ petition. The writ petition is dismissed. However, in the interest of justice, the Settlement Officer, Consolidation, respondent No. 2 is directed to dispose of the restoration application filed by the contesting respondent expeditiously, preferably within a period of three weeks from the date of production of a certified copy of this order before him.