

(1993) 05 AHC CK 0098

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 14386 of 1990 and 12936 of 1993

Raja Ram and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-05-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 149
Court Fees Act, 1870 — Section 6
Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 —
Section 4, 4(1), 5, 7

Citation : (1993) 3 AWC 1712

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : Sakha Ram Singh, J.N. Singh and Ajay Yadav, for the Appellant; B.R. Singh, for the Respondent

Final Decision : Partly Allowed

Judgement

R.R.K. Trivedi, J.—In both the aforesaid Writ Petitions, subject-matter of the dispute as well as parties are common and both may be disposed of by a common judgment

2. Sri B.R. Singh has appeared in both the Writ Petitions for Nagar Palika and the rest of the Respondents are represented by learned standing Counsel and learned Counsel for the Petitioners as well as learned Counsel for the Respondents are agreed that both the aforesaid Writ Petitions may be disposed of finally at this stage.

3. Facts giving rise to Writ Petition No. 14386 of 1990, here-in-after referred to as "First Petition", are that the Petitioners were served with a notice u/s 4/5/7 of U.P. Public Premises (Eviction of unauthorised Act, 1972, here-in-after referred to as "Act" to show cause as to why Petitioners may not be dispossessed from the plots in dispute which belong to Respondent No. 4 Nagar Palika, Mainpuri. The

proceeding were initiated on the application of Respondent No. 4. which was numbered as 6 of 1986 before the Prescribed Authority. Prescribed Authority after hearing parties by order dated 26th April, 1986 directed the ejectment of the Petitioners and also imposed damages at the rate of Rs. 2,000 per year for years 1955 onwards as directed by this Court on 14th November, 1967. It appears that there was a dispute of title also between Petitioners and Respondent no, 4 which was finally concluded in Second Appeal No. 174 of 1965 decided on 29th November, 1971 wherein it was found that Nagar Palika is owner of the plots in dispute and possession of Petitioners was found to be unauthorised. Aggrieved by the order of the Prescribed Authority, Mainpuri Petitioners filed Misc. Civil Appeal No. 123 of 1986 in the Court of District Judge, Mainpuri in which by order dated 25th June, 1986 by the then District Judge, stayed the enforcement of the order passed by Prescribed Authority.

4. The aforesaid appeal was however dismissed in default on 26th November, 1989 It appears that an application was moved by Petitioners on 29th November, 1989 for restoration of the appeal and readmitting same for hearing. The application was numbered as Paper No. 4-C. Office report was made that on the application and the affidavit the Courts fees has not been paid and there is deficiency of the same. On this report the learned II Additional District, Judge Mainpuri by his order dated 30th November, 1989 rejected the application. Thereafter another application was placed before the Appellate Court which was also dated 25th November, 1989 and it also contained prayer for restoration of Appeal No. 123 of 1986. By. order dated 10th April, 1990 office report was sought by the Appellate Court and after seeing the office report Petitioners were required to file objection against the office report. The objection was filed by Petitioners which was marked as Paper No. 8-C.

5. In the objection of the Petitioners, it has been stated that the application for restoration was actually presented on 29th November, 1989 and clerk of the Counsel when went to the office on 30th November, 1989 for doing pairwi then it was found that application filed on 29-11-89 was not traceable. Thus under confusion another application for restoration of the appeal was filed on 30th November, 1989 which was rejected by the Court on the same day It has been further stated that the- Counsel has now learnt that earlier application moved for the restoration of the application in office which was not traceable, has now been traced, which was dismissed on account of the deficiency in payment of the Court fee. It was also prayed that as previous application has been now traced and is available he does not want to press the second application which will not effect merit of the case.

6. Respondent No. 3, however, disagreed with the explanation of Petitioners and rejected the application 4-C by his order dated 23rd April, 1990 Aggrieved by his aforesaid orders Petitioners have filed the First Petition for quashing orders dated 26th April, 1986, 26th November, 1989, 30th November, 1989 and 23rd April, 1990.

7. Writ Petition No. 12936 of 1993, here-in-after referred to as "Second Petition", has been filed for quashing fresh notices u/s 4(1) of the Act calling Petitioner Raja Ram to show cause as to why he may not be ejected. Three notices served on the Petitioner have been filed as Annexure-10, 11 and 12 to the Writ Petition which are also for same land, which was subject matter of the proceedings from which the First Petition has arisen. The order dated 26th April, 1986 has been filed as Annexure-4 to this Writ Petition also and in the order the plots in dispute have been mentioned. The total plots mentioned are 12 with the area 10.65 acres. However the notices filed as Annexures 10, 11 and 12 are with regard to total 11 plots consisting of the area 9.23 acres. The Petitioners filed a supplementary affidavit also annexing therewith original notices served on them. The validity of these notices have been challenged on various grounds including the ground that Respondent No. 1 earlier issued notices against Petitioners under the provisions of the Act which was decided against him and the dispute is still sub-judice and pending before this Court in shape of Civil Misc. Writ Petition No. 14386 of 1990 and as such the Respondents cannot issue impugned notices.

8. I have heard learned Counsel for the parties and have also perused the materials on record. From the perusal of the orders dated 30th November, 1989 and 23rd April, 1990 which have been annexed as Annexures 2 and 4 respectively in the First Petition, it is clear that the application of the Petitioners for restoration and readmission of the appeal which was dismissed in default, was rejected on the ground of deficiency in the payment of the Court fees on the application of the Petitioners. The Appellate Court has committed a mistake in rejecting the application straightway without giving an opportunity to Petitioners to make good the deficiency. The provisions of Section 149 CPC are very clear in this regard that the suit, appeal or application filed, if suffers from any deficiency in payment of any Court fee opportunity should be given to make good the same and the Court before acting upon the documents, should call upon the Plaintiff or the Appellant to make good the deficiency. The provisions contained in Order 7 Rule 11 (c) of CPC also contain the identical provisions that the plaint can be rejected only when the Plaintiff fails to make good the deficiency in payment of Court fees. The provisions may not be strictly applicable but the principles contained therein will apply to applications also. In my opinion, the learned II Additional District Judge, Mainpuri committed a serious mistake in rejecting the application out-rightly without giving any opportunity to the Petitioners" Counsel to make good the deficiency in payment of the Court fee. The rejection of the application as such for restoration of the appeal on 30th November, 1989 was illegal and in contravention of Section 6 of the Court Fees Act and Section 149 CPC and the order cannot be sustained. It may be mentioned that the application for the restoration was filed within three days from the date of the dismissal of the appeal and it was well within time and but for the rejection of the application on 30th November, 1989 on the ground of non-payment of the Court fee, there was every likelihood of the appeal being restored.

9. It appears that on noticing that the application for restoration has been

rejected, some over action was done on the part of the Petitioners and a second application was tried to be placed on record which was noticed by the learned II Additional District Judge and after seeing the objection filed by Petitioners it was rejected. However as the first application of the Petitioners was dismissed for the mistake of the Court in not giving opportunity to make good the deficiency, the subsequent action of the Petitioners though was not proper and cannot be appreciated in any manner, does not effect in any way the merits of the case. It well established principle that the parties cannot be allowed to suffer for the mistake of the Court. As clear from the facts and circumstances of the case, there cannot be any doubt that the order dated 30th November, 1989 rejecting the application No. 4-C was illegal and was mistake on the part of the Court. Before passing the order an opportunity should have been given to Petitioners to make good the deficiency. The Appellate Court however passed the order dated 23rd April, 1990 without considering this aspect of the case and appears to have been mainly influenced by the conduct of the Petitioners in moving the second application. The Court has also failed to consider the cause shown by Petitioners explaining his absence when on 26th November, 1989 appeal was dismissed in default. Even at that stage the Appellate Court failed to rectify its mistake and failed to give an opportunity to Petitioners to make good the deficiency and thereafter to decide the application on merit after hearing parties in accordance with law. In my opinion, the order dated 23rd April, 1990, for the reasons stated above, cannot be sustained in law and it suffers from manifest illegality.

10. I have heard learned Counsel for both the parties and learned Counsel have agreed that the appeal may be restored at this stage and Appellate Court may be directed to decide appeal itself within a fixed time as dispute between parties for the land in dispute is pending since long.

11. So far as the Second Petition is concerned, in my opinion, there was no justification on the part of the Respondents to initiate fresh proceedings in respect of the same land in dispute. The order dated 26th April, 1986 covers all the plots in dispute and is in respect of larger area than mentioned in the impugned notices served on Petitioner Raja Ram. In my opinion, these notices have been issued again either out of anxiety to get possession of the property in dispute or in ignorance of the pendency of the First Petition in this Court. As by order dated 26th April, 1986 ejectment has already been directed and damages have also been fixed, the impugned notices were not at all required to be issued and they should be kept in abeyance.

12. For the reasons recorded above, Civil Misc. Writ Petition No. 14386 of 1990 is allowed in part. The orders dated 30th November, 1989, Annexure-2 to the Writ Petition and 23rd April, 1990, Annexure-4 to the Writ Petition are hereby quashed. The application of Petitioners for restoration of Misc. Appeal No. 123 of 1986 shall stand allowed and the appeal shall stand restored to its original number which shall be heard and decided by the appellate Authority within a period of three months from the date a certified copy of this order is filed before

him. So far as the impugned notices challenged in Writ Petition No. 12936 of 1993 are concerned they shall be kept in abeyance and no action shall be taken on the same. Until Civil Misc. Appeal No. 123 of 1986 is decided and suitable orders shall be passed on these notices by the Prescribed Authority in accordance with order passed in Civil Misc. Appeal No. 123 of 1986. There will be no order as to costs.