
(1998) 07 AHC CK 0071

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1001 of 1992

Ram Rup and Others

APPELLANT

Vs

First Addl. District Judge, Jaunpur and Others

RESPONDENT

Date of Decision : 24-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 07 AHC CK 0071

Hon'ble Judges : D.K.Seth, J

Final Decision : Dismissed

Judgement

D.K. Seth, J.—Mr. D.S.M. Tripathi, learned Counsel for the petitioner, while supporting the application for recalling the order dated 27/4/1998, contends that the order was passed in his absence. After having gone through the application and hearing Mr. Tripathi, it appears that there were sufficient grounds that prevented him from appearing in the case when the matter was taken up on the said date. Therefore, the application is allowed and the order dated 27/4/1998 is recalled.

2. Immediately thereafter Mr. Tripathi asked, in view of urgency of the matter, to take up this matter for arguments. Accordingly, it is taken up for hearing.

3. Mr. Tripathi contends that the writ petition was dismissed by order dated 27/4/1998 altogether on a misplaced view taken by this Court.

4. In fact by the said order dated 27/4/1998 the writ petition was dismissed as not maintainable on the ground that the writ petition arises out of an order passed in civil suit refusing to grant injunction, and therefore, any order passed in this case would amount to issue of a mandamus against a private individual since both the parties are private individuals without any public duty, relying on the decision in the case of Ganga Saran v. Civil Judge, Hapur, AIR 1991 All 114.

5. In order to appreciate the contention, it would be useful to quote said order hereinafter:

?Original suit No. 250 of 1991 was filed for mandatory injunction restraining the respondents 3 to 5 from interfering with the possession of the petitioners in respect of the suit property from making any construction thereon and demolishing or damaging any construction existing thereon. Alongwith the said suit, an application for temporary injunction was also filed. An interim order was issued thereon vide order dated 14391. Ultimately, the said application was contested by the respondent No. 3 and the application for temporary injunction was dismissed by the order dated 1381991. An appeal was filed, numbered as Appeal No. 279 of 1991. The Additional District Judge, Jaunpur by his order dated 8101991 dismissed the said appeal. These are the two orders which are challenged in the present writ petition.

The question boils down to the grant or refusal of injunction in between the two private individuals who do not have any public or .statutory to discharge. Grant of injunction in such case would amount to grant of mandamus which is not available in dispute between two such private individuals. A Full Bench of this Court in the case of Ganga Sharon v. Civil Judge, Hapur, AIR 1991 All 114, has held that such writ petition is not maintainable. Following the ratio in the case of Ganga Sharon (supra), this writ petition is dismissed as not maintainable. There will be no order as to costs. The interim order dated 2471992shall stand discharged.?

6. Relying on the decision in the case of Ganga Saran (supra), Mr. Tripathi contends that in paragraph 11 of the said judgment, the Full Bench had held that in a situation where revision is barred against the appellate or revisional order passed by the District Courts and the said order suffers from patent error of law and further would cause substantial injustice to the party aggrieved, can it be said that such order is not amenable to the extraordinary "jurisdiction of the High Court under Art. 226 of the Constitution ? In answer to the said question, it was observed in the said paragraph to the extent that in the opinion of the Court although every interlocutory order passed in a civil suit is not subject to review under Article 226 of the Constitution, but if it is found from the order impugned that fundamental principles of law has been violated and further such order causes substantial injustice to the party aggrieved, the view taken by the Supreme Court in Qamruddin's case, 1990 AWC 308 will not preclude such a writ being issued by the High Court under Article 226 of the Constitution. While limiting extent of the scope of invoking writ jurisdiction, the Full Bench had also followed the ratio decidendi in Qamruddin's case to the extent that a writ of mandamus cannot be issued to private individual under Article 226 of the Constitution unless such private individual has statutory duty to perform a public duty. Where the aggrieved party approaches the High Court under Article 226 of the Constitution against an order passed in a civil suit refusing to issue injunction to a private individual, who has no statutory duty to perform a public duty or vacating an order of injunction, the main relief is for issue of a writ of mandamus to a private individual and such a writ petition under Art. 226 of the Constitution would not be maintainable.

7. Thus, the Full Bench had carved out two exceptions, one that the writ jurisdiction in the cases where no remedy against an order passed in revisional or appellate jurisdiction by the District Courts is available, can be exercised only within limited compass where the impugned order had violated the fundamental principles of law causing substantial injustice to the party aggrieved and that such order suffers from patent error of law and causes manifest injustice to the party aggrieved. The second exception is that in respect of an order passed in a civil suit granting or refusing injunction, between private individuals, none of whom is under any obligation of statutory duty to perform a public duty.

8. In the present case, the order impugned arises out of a civil suit being Original Suit No. 250 of 1991, in which the only relief of mandatory injunction restraining the respondents from interfering with the possession of the petitioner in respect of the suit property, was sought for. The application for injunction filed in the said suit having been dismissed, an appeal was preferred which was also dismissed. These two orders dated 13th August, 1991 and 8th October, 1991 refusing to grant injunction has since been impugned in the present writ petition. Admittedly, the parties to the said suit are two private individuals. Admittedly, none of whom are under any Statutory duty to perform a public duty. Thus, any order that might be passed in this writ petition would amount to a writ against a private individual having no statutory duty to perform a public duty. Therefore, in view of the ratio laid down by the Full Bench in the case of Ganga Sarati (supra), this Court is not empowered to grant any order which could amount to issue a writ of mandamus against a private individual, who is not under statutory duty to perform a public duty and as such the writ petition is not maintainable.

9. Then again, Mr. Tripathi has not been able to show as to what is patent error of law or what fundamental principles of law have been violated. Having gone through the record, I have not been able to find any violation of fundamental principles of law or any patent error of law. Unless there is violation of fundamental principles of law or patent error of law, even if the order causes injustice, the same is not amenable to writ jurisdiction within the ambit of the ratio decided in Ganga Saran (supra). Even on that ground as well, this is not a fit case in which writ jurisdiction can be invoked.

10. Mr. Tripathi, had relied on the decision in the case of Mukesh Kumar Srivastava v. Additional District Judge, Allahabad, 1998 Allahabad Civil Journal 458, but the said case does not help in the matter of contention of Mr. Tripathi. In as much as in the said case the very question that a writ under Article 226 is not maintainable in such a case has since been accepted with approval whereas it was held that such orders passed in such suit would be amenable to the power of superintendence of the High Court under Article 227 of the Constitution. No prayer was made for treating this application as one under Article 227 of the Constitution neither the writ petition was sought to be amended nor it was couched in the form of an application under Article 227 of the Constitution. Therefore, the ratio decidendi in the case of Mukesh Kumar Srivastava (supra)

also does not help Mr. Tripathi.

11. For all these reasons, the writ petition fails and is accordingly dismissed. The interim order dated 24/7/1992 stands discharged.

12. However, it appears that the suit is an old one filed sometimes in 1991. It is expected and desired that the same should be decided as early as possible preferably within a period of nine months from the date a copy of this order is communicated to the Court below.

Let a copy of this order be furnished to the learned Counsel on payment of usual charges within 7 days.

W.P. dismissed.