
(1989) 07 AHC CK 0111

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 4739 of 1986

Singhasini Chemicals

APPELLANT

Vs

XIV Additional District and Sessions Judge and Another

RESPONDENT

Date of Decision : 12-07-1989

Acts Referred:

Citation : (1989) 2 AWC 1163

Hon'ble Judges : M.P. Singh, J

Bench : Single Bench

Advocate : Markandey Katju, for the Appellant; S.C. and Vijay Bahadur, for the Respondent

Final Decision : Allowed

Judgement

M.P. Singh, J.—The present petition has been filed against the order dated 1-10-1985 passed by the VIIth Addl. District Judge, Kanpur, by means of which the application to consolidate the two suits has been rejected.

2. The Petitioner is tenant of premises No. 84/3 situated at Factory Area Fazalganj, Kanpur. Respondent No. 2 is the owner and landlord.

3. The landlord filed suit No. 59 of 1980 in the court of VIIth Additional District Judge for recovery of Rs. 13,500/- as arrears of rent against the Petitioner. During the pendency of the said suit, he filed another Suit No. 372 of 1983 in the court of Civil Judge for injunction restraining the Defendant-Petitioner from causing any damage to the building.

4. It is admitted by both the parties that Suit No. 372 of 1983 which was pending before the Civil Judge has already been transferred to the court of VIIth Additional District Judge under the orders of learned District Judge. Thus, admittedly both the suits are pending before the VIIth Additional District Judge, Kanpur.

5. In fact, the nature of two suits referred to above are different; one is for

recovery of arrears of rent and the other is for injunction, but the parties are same. The premises is also the same.

6. The main controversy hinges on the admissibility of the lease-deed dated 31st March, 1980, which is subject matter in both the suits. It is stated that by means of an order dated 28-2-1985 the said lease-deed has been held to be admissible in Suit No. 372 of 1983, whereas a conflicting order has been passed in Suit No. 59 of 1980 on 28th February, 1983.

7. By means of U.P. Amendment Act No. 57 of 1976, which came into force on 1-1-1977, Order IV-A has been brought into existence, which runs as under:

1. Consolidation of suits and proceedings. When two or more suits or proceedings are pending in the same court, and the court is of opinion that it is expedient in the interest of justice, it may by order direct their joint trial, whereupon all such suits and proceedings may be decided upon the evidence in all or any such suits or proceedings.

8. Considering facts and circumstances of the case, I am of the view that in case both the suits are consolidated together, the possibility of coming into existence of two conflicting decisions will be eliminated.

9. The only point on which the present petition has been opposed by Sri Vijay Bahadur, learned Counsel for the Respondent, is that in Suit No. 372 of 1983 entire evidence has come to an end, but in Suit No. 59 of 1980 the parties have yet to lead evidence. In case both the suits are consolidated together, it will cause delay in disposal of this suit.

10. The apprehension of learned Counsel for the Respondent appears to be reasonable, but I direct learned VIIth Additional District Judge to decide both the suits within three months from the date of presentation of a certified copy of this order before him without granting adjournment to any party.

11. It appears while passing the order dated 1-10-1985 learned VIIth Additional District Judge has not taken into consideration the provisions of Order IV-A quoted above. Thus, the order suffers from errors apparent on the face of record, and is quashed. Both the suits are ordered to be consolidated together.

12. In the result, the petition succeeds and is allowed without any order so as to costs.

13. Let a copy of this order be given to learned Counsel for the parties on payment of usual charges within a week.