

Allahabad Development Authority Vs. Saifuddin and Others

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Court : Allahabad

Decided On : May-08-1998

Reported in : 1998(3)AWC1621

Judge : G.S.N. Tripathi and ;J.C. Gupta, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 148

Appeal No. : First Appeal No. 547 of 1991

Appellant : Allahabad Development Authority

Respondent : Saifuddin and Others

Advocate for Def. : Janardan Sahai, Adv.

Advocate for Pet/Ap. : J.N. Sharma and ;B.B. Paul, Advs.

Judgement :

G.S.N. Tripathi and J.C. Gupta, JJ.

1. In this appeal, the Hon'ble Supreme Court had on 11.8.97 passed the following order :

'The respondents, however, are entitled to their costs throughout. We, therefore, direct that the appeal shall stand restored. If the appellants pay to the respondents a sum of Rs. 10,000 as costs throughout. This amount shall be paid within a period

of four weeks from today, failing which the order dated 30.6.1992 shall stand confirmed.'

2. Admittedly the time fixed by the Hon'ble Supreme Court expired on 8.9.97.

3. It is again admitted that the money was not paid within that time. It is alleged that the money was tendered by the appellant. But that has been denied on oath by the respondents. There is no such evidence to believe the appellant and disbelieve the respondents on this point.

4. It is said that the money was sent by the Money Order. The report of the Postman is dated 9.9.97 that the payees could not be contacted as they were not available. The money was thus returned to the sender. Mr. B. B. Paul learned counsel for the appellant states that money has not been received back by his client.

5. The respondents deny that at any time they refused to accept the money ever tendered by the Postman to them. Therefore, the position stands that the money has not been paid or tendered within the time prescribed by the Hon'ble Supreme Court.

6. Meanwhile, it is relevant to note that one of the respondent Saifuddin died in the year, 1994 (4.11.94). Therefore, the question of refusal by him of the money tendered to him, does not arise.

7. On the application of the appellant, the Court passed an order dated 24.10.1997 that without prejudice to the opposite party, the money might be deposited with the Registry of this Court. Accordingly, it was done on 25.10.1997.

8. The position now comes to this that the money has not been tendered or deposited within the time prescribed by the Hon'ble Supreme Court. Therefore, the order quoted above passed by the Hon'ble Supreme Court, becomes operative.

9. Learned counsel drew our attention to the provisions of Section 148 of the Cr. P.C. which runs as follows :

'Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court, may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.'

The word 'Court' has been used twice, it means that the Court which passed an order and fixed a date for a particular act and not any other Court, much less the subordinate court.

10. Without doubt, this Court is subordinate to the Hon'ble Supreme Court. Therefore, it does not have power to extend the time. Under these circumstances, we refuse to accept the prayer made by the learned counsel for the appellant. The prayer is accordingly rejected.

11. The appellant may, however, approach the Hon'ble Supreme Court for further clarification of the order and extension of time. If he so chooses or is so advised.

12. With these observations and in view of the fact that the order of the Hon'ble Supreme Court has not been complied with within the time prescribed by the appellant, the appeal as per the Apex Court's order, stands dismissed. The record may be consigned.

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