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**Hafiz ChiraguddIn and Others Vs. Vth Upper Munsif, Agra and Another**

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**SooperKanoon Citation** : sooperkanoon.com/482377

**Court** : Allahabad

**Decided On :** Aug-04-1998

**Reported in** : 1998(3)AWC2179

**Judge** : D.S. Sinha and ;Bhagwan Din, JJ.

**Acts** : Constitution of India - Article 226; Code of Civil Procedure (CPC), 1908 - Order I, Rule 8 - Order 6, Rule 17; Uttar Pradesh Muslim Waqf Act, 1960 - Sections 66

**Appeal No.** : C.M.W.P. No. 3085 of 1990

**Appellant** : Hafiz ChiraguddIn and Others

**Respondent** : Vth Upper Munsif, Agra and Another

**Advocate for Def.** : S.C. and ;S. Harkauli, Adv.

**Advocate for Pet/Ap.** : Rajeshji Verma, Adv.

**Judgement** :

**D.S. Sinha, J.**

1. Heard Sri Rajeshji Verma, learned counsel appearing for the petitioners and Sri Sushil Harkauli, learned counsel representing the contesting respondent No. 2.

2. By means of this writ petition under Article 226 of the Constitution of India, the petitioners pray that orders dated 21.11.1983, 21.9.1984 and 11.1.1990, be quashed.

3. The impugned orders dated 21.11.1983 and 11.1.1990 have been passed in Civil Suit No. 280 of 1982 between Hafiz Chiraguddin and others and Sri Inayat All. The order dated 21.9.1984 was passed in revision against the order dated 21.11.1983.

4. The suit was instituted by the petitioners in representative capacity under Order I, Rule 8 of the Code of Civil Procedure, 1908 (hereinafter called the 'Code'), against the respondent No. 2 for permanent injunction restraining him from demolishing any grave or raising any construction in the property in dispute. The property in dispute, according to petitioners, was Kabristan.

5. Before the trial court, a plea was raised on behalf of the defendant that the provisions of Section 66 of U. P. Muslim Waqf Act, 1960 (hereinafter called the 'Act') were attracted inasmuch as the suit related to a grave-yard. It was urged that as required by Section 66 of the Act. notice to Sunni Central Waqf Board constituted under the Act was necessary. This plea found favour with the trial court. Therefore, the trial court passed the order dated 21.11.1983, and directed that requisite notice be issued to Sunni CentralBoard, Lucknow. The Court required the petitioners to take requisite steps within one week.

6. The petitioners, instead of taking requisite steps as directed by the trial court vide its order dated 21.11.1983, filed the Civil Revision No. 244 of 1983 challenging the said order of the trial court. The civil revision was heard and decided by the VIIth Additional District Judge, Agra. vide order and judgment dated 21.9.1984. By this order, the learned Judge dismissed the revision and affirmed the order of the trial court dated 21.11.1983.

7. The petitioners did not challenge the order dated 21.11.1983 passed by the trial court and the order dated 21.9.1984 passed by the revisional court at any point of time except in this writ petition before this Court.

8. The order dated 21.11.1983 of the trial court having merged in the revisional order dated 21.9.1984 and these orders having not been challenged for a period of about 6 years, cannot be allowed to be challenged in this Court in its extraordinary discretionary jurisdiction. Otherwise also, in the opinion of the Court, the Courts below did not commit any Illegality in requiring the petitioners to take steps to serve the Sunni Central Waqf Board, Lucknow. Indeed, the Court was bound to take notice of the provisions of Section 66 of the Act which obliged the trial court to issue notice to the said Board.

9. After the dismissal of the revision, confirming the order of the trial court dated 21.11.1983. the petitioners repeatedly obtained time but did not take steps to serve the Sunni Central Waqf Board, Lucknow as required by the order dated 21.11.1983.

10. On 11.1.1990 came up the application of the petitioners under Order VI, Rule 17 of the Code seeking certain amendments in the plaint. The Court noticed that despite the order dated 21.11.1983, affirmed in revision, and despite being granted time repeatedly, the petitioners did not take steps to serve the Sunni Central Waqf Board. Lucknow. The trial court was of the opinion that plaintiffs were not prosecuting the suit seriously. It further opined that the conduct of the petitioners was such that their amendment application was liable to be dismissed on the ground of their default in prosecuting the suit and not complying the order of the Court dated 21.11.1983 requiring them to take steps to serve the Sunni Central Waqf Board. Lucknow. However, in the interest of justice, the trial court passed the Impugned order dated 11.1.1990 giving the petitioners fresh opportunity for taking steps within seven days on payment of Rs. 125 by way of cost. Apart from imposing the cost, the Court also directed that in case the petitioners failed to take steps within the time allowed by it, their amendment application would stand rejected.

11. Against the above order dated 11.1.1990, the instant petition has been instituted in this Court. The Court entertained the petition and stayed the operation of the impugned order.

12. The facts, noticed above, leave no room for doubt that the petitioners are guilty of not complying the order of the Court dated 21.11.1983 even though it was duly confirmed in revision. The fact that the petitioners have been obtaining time repeatedly for taking steps in the light of the order dated 21.11.1983 and have been failing to take steps make it clear that they are not serious and have some ulterior motive to achieve in instituting the suit, and this conduct clearly disentitles them to any relief from this Court in the proceedings under Article 226 of the Constitution of India. The jurisdiction under Article 226 of the Constitution is not meant to help those who flout the law and disobey the orders of the Court with impunity.

13. There is yet another aspect of the matter. The impugned order of the trial court dated 11.1.1990. In the opinion of the Court, does not cause any prejudice to the petitioners. It merely requires the petitioners to take steps to serve the Sunni Central Waqf Board, Lucknow within the extended period andimposes the condition that on their failure their amendment application would stand rejected. The amendment application has not been disposed of on merits. The petition is. therefore, misconceived and liable to be dismissed.

14. in the result, the petition fails and is hereby dismissed. There is no order as to cost.

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