

ishwar Dayal Goyal Vs. Additional District Judge and ors.

ishwar Dayal Goyal Vs. Additional District Judge and ors.

SooperKanoon Citation : sooperkanoon.com/491769

Court : Allahabad

Decided On : Nov-21-2003

Reported in : 2005(1)ARC605

Judge : S.P. Mehrotra, J.

Acts : Provincial Small Cause Courts Act - Sections 25; [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petition No. 51694 of 2003

Appellant : ishwar Dayal Goyal

Respondent : Additional District Judge and ors.

Advocate for Def. : None

Advocate for Pet/Ap. : H.P. Dube, Adv.

Disposition : Petition dismissed

Judgement :

S.P. Mehrotra, J.

1. The present Writ Petition has been filed by the petitioner under Article 226 of the [Constitution of India](#), interalia, praying for quashing the judgment and order dated 6.3.2003 (Annexure No. 2 to the Writ Petition) passed by the learned

Additional District Judge/Fast Track Court No. 5, Saharanpur in so far as it imposed the cost of Rs. 2000/- on the petitioner while allowing S.C.C. Revision No. 3 of 2001 filed by the petitioner.

2. From the perusal of the averments made in the Writ Petition and the Annexure thereto, it appears that the Petitioner alongwith Proforma Respondents Nos. 10 to 19 filed a suit against the Respondents Nos. 3 to 9 (Respondents 1st set) for eviction, arrears of rent and damages etc., in respect of the shop situated in Mohalla Arhat Bazar, Kasba Gangoh, Pargana Gangoh, District Saharanpur. The said shop has hereinafter been referred to as the 'disputed shop'.

3. The said Suit was registered as S.C.C. Suit No. 50 of 1995.

4. It further appears that by the order dated 10.1.2001, the learned Judge, Small Cause Court, Saharanpur rejected an adjournment application being application No. 146C filed on behalf of the Petitioner and Proforma Respondents Nos. 10 to 19 (i.e., plaintiffs in the said Suit) and closed the evidence of the Petitioner and Proforma Respondents Nos. 10 to 19 (i.e., plaintiffs in the said Suit), and fixed 24.1.2001 for evidence of the defendants, in the Suit. Copy of the said order dated 10.1.2001 has been filed as Annexure No. 1 to the Writ Petition.

5. Thereupon, the Petitioner and Proforma Respondents Nos. 10 to 19 (i.e. plaintiffs in the said Suit) filed a Revision under Section 25 of the Provincial Small Cause Courts Act which was registered as S.C.C. Revision No. 3 of 2001.

6. By the order dated 6.3.2003, the said S.C.C. Revision No. 3 of 2001 filed by the Petitioner and Proforma Respondents Nos. 10 of 19 (i.e. plaintiffs in the said Suit) was allowed subject to various conditions mentioned in the said order dated 6.3.2003 including the condition of payment of Rs. 2000/- as cost by the Petitioner and Proforma Respondents Nos. 10 to 19, (i.e. plaintiffs in the said Suit).

7. Thereafter, the Petitioner has filed the present Writ Petition on 19.11.2003 seeking the reliefs mentioned above.

8. I have heard the learned Counsel for the Petitioner, and perused the record.

9. From the above narration of the facts, it is evident that while the order impugned in the present Writ Petition was passed on 6.3.2003, the Present Writ Petition has been filed by the Petitioner before this Court on 19.11.2003.

10. In Paragraph No. 22 of the Writ Petition, the Petitioner has tried to explain the delay in filing the present Writ Petition. It is, interalia, stated in the said Paragraph No. 22 of the Writ Petition that 'the petitioner was not aware of about the impugned judgment dated 6.3.2003 and he came to know about the imposition of cost only in the 1st week of November, 2003.'

11. The said averments made by the Petitioner in the aforesaid Paragraph No. 22 of the Writ Petition cannot, in my view, be believed. The impugned order dated 6.3.2003 shows that the Counsel for the Petitioner and Proforma Respondents Nos. 10 to 19 (i.e., plaintiffs in the said Suit) as well as the Counsel for the other side (i.e., defendants in the said Suit) were heard before passing the aforesaid judgment and order dated 6.3.2003 in the said S.C.C. Revision No. 3 of 2001. By the said judgment and order dated 6.3.2003, the learned Additional District Judge/Fast Track Court No. 5, Saharanpur, as noted above, allowed the said S.C.C. Revision No. 3 of 2001 filed by the Petitioner and Proforma Respondents Nos. 10 to 19 (i.e., plaintiffs in the said Suit). Thus, there is no reason as to why the Petitioner would not be aware of the said Judgment and order dated 6.3.2003 passed in his favour.

12. In the circumstances, the Petitioner has failed to give any reasonable and satisfactory explanation for the delay in filing the present Writ Petition. The Writ Petition is, therefore, liable to be dismissed on the ground of laches.

13. Even otherwise, the present Writ Petition has been filed against the imposition of cost of Rs. 2000/- while allowing the said S.C.C. Revision No. 3 of 2001 filed by the Petitioner and Proforma Respondents Nos. 10 to 19 (i.e., plaintiffs in the said Suit), and giving them opportunity to lead evidence in the said Suit.

14. Having regard to the facts and circumstances mentioned in the impugned judgment and order dated 6.3.2003, I am of the opinion that no illegality has been committed by the learned Additional District Judge/Fast Track Court No. 5,

Saharanpur in imposing the cost of Rs. 2000/- on the Petitioner and Proforma Respondents Nos. 10 to 19 (i.e. plaintiffs in the said Suit).

15. The Present Writ Petition lacks merit, and the same is liable to be dismissed. The Writ Petition is accordingly dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com