

Subhash and ors. Vs. State of U.P. and ors.

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SooperKanoon Citation : sooperkanoon.com/492985

Court : Allahabad

Decided On : Oct-22-2008

Reported in : 2009(2)AWC1307

Judge : V.M. Sahai and; Pankaj Mithal, JJ.

Appellant : Subhash and ors.

Respondent : State of U.P. and ors.

Advocate for Pet/Ap. : Sri. Prabhakar Sinha

Disposition : Appeal allowed

Judgement :

ORDER

V.M. Sahai and Pankaj Mithal, JJ.

1. We have heard Sri Prabhakar Sinha, learned Counsel for the appellants and learned standing counsel appearing respondents.

2. The only argument of learned Counsel for the appellants is that the writ petition of the appellants has been dismissed by learned single Judge without granting time even once to file rejoinder-affidavit so as to rebut the stand taken in the counter-affidavit.

3. We are of the opinion that the writ petitioners have a right to file rejoinder-affidavit and they were entitled for some reasonable time to file rejoinder-affidavit. The purpose of granting time to file rejoinder-affidavit is to meet the allegations made in the counter-affidavit. Accordingly in dismissing the writ petition only on the basis of the counter-affidavit the learned single Judge committed an error as it is ex facie against the principles of fair play. It may have been different where repeatedly time was being granted to file rejoinder-affidavit and the petitioner was not filing rejoinder-affidavit. In that case the learned single Judge would have been justified in deciding the writ petition but where no time was ever granted for filing rejoinder-affidavit, the learned single Judge was not justified in deciding the writ petition without giving an opportunity for filing rejoinder-affidavit. Therefore, the judgment and order dated 1.8.2008, passed by learned single Judge is not sustainable.

4. In the result, the appeal succeeds and is allowed. The Judgment and order dated 1.8.2008, passed by learned single Judge is set aside. The appellants are granted three weeks time to file rejoinder affidavit and thereafter the writ petition be decided by the learned single Judge subject to his lordship's convenience.