

Smt. Girja Devi Vs. Additional District Judge, Court No. 1 and ors.

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SooperKanoon Citation : sooperkanoon.com/494688

Court : Allahabad

Decided On : Oct-12-2006

Reported in : 2007(1)AWC1013

Judge : Rakesh Tiwari, J.

Appellant : Smt. Girja Devi

Respondent : Additional District Judge, Court No. 1 and ors.

Disposition : Petition dismissed

Judgement :

Rakesh Tiwari, J.

1. Heard counsel for the parties and perused the record.

2. This writ petition arises out of the judgment and order dated 22.8.2006, passed by the Additional District Judge, Court No. 1, Banda in S.C.C. Revision No. 73 of 2005, Smt. Girja Devi and Anr. v. Virendra Kumar Rawat and Anr. and the judgment and order dated 14.11.2005, passed by the Judge Small Causes Court, Banda in Misc. Case No. 73/74 of 2000, Smt. Arti v. Virendra Kumar and Anr.

3. Brief facts of the case are that Suit No. 1 of 1979, Virendra Kumar Rawat v. Smt. Girja Devi and Ors. was filed before the Judge Small Causes Court, Banda, for arrears of rent and ejection against the petitioner. The suit was decreed ex

parte vide order dated 15.12.2000, passed by the trial court. The petitioner filed a restoration application for recall of the ex parte order dated 15.12.2000 and on the same day he moved an application for permission to deposit the decretal amount.

4. It is stated that the tender could not be passed on that date and the money could not be deposited. The tender was handed over to the counsel in the court below for the petitioner in November, 2001 and the money was deposited on 26.11.2001.

5. An objection was filed by respondent No. 1 to the restoration application inter alia, that the decretal amount was not deposited in time. Thereupon the petitioner moved an application under Section 5 of the Limitation Act for condonation of delay. Against the aforesaid application under Section 5 of Limitation Act, respondent No. 1 filed his objection (Paper No. 36C). The petitioner filed replication to the aforesaid objection.

6. The Judge Small Causes Court rejected the application under Section 5 of the Limitation Act vide order dated 14.11.2005. Aggrieved by the aforesaid order dated 14.11.2005, the petitioner filed S.C.C. Revision No. 73 of 2005 before the revisional court which too was dismissed vide order dated 22.8.2006, hence this writ petition.

7. By order dated 14.11.2005 application 4Ga of the petitioner under Section 17 of the Provincial Small Causes Courts Act has been rejected.

8. By order dated 22.8.2006, passed in S.C.C. Revision No. 73 of 2005, Smt. Girja Devi and Anr. v. Virendra Kumar Rawat and Ors., the revisional court has affirmed the order dated 14.11.2005 of the Judge Small Causes Court holding that the decretal amount has been deposited by the petitioner after delay of more than 10 months and application for condonation of delay 34Ga has been filed after about 4 years which shows callous and irresponsible attitude of the petitioner.

9. The contention of the counsel for the petitioner is that the petitioner has submitted tender on 23.12.2000, which is said to have been passed on 3.1.2001. He submits that since after passing of the said order the Court did not hand over

the same to him till November, 2001 and he could not deposit the decretal amount in time and the same was deposited on 26.11.2001.

10. The contention of the counsel for the petitioner that the tender is to be handed over by the Court to his counsel in the court below for depositing the same is wholly erroneous rather it is the duty of the counsel to enquire about passing of the order and deposit the decretal amount on the first date of hearing.

11. It appears from the record that many dates have been fixed in the case between 3.1.2000, 23.10.2005 and after issuance of tender on 26.2.2001, 24.2.2001, 13.4.2001, 6.7.2001, 31.8.2001 and 27.10.2001 and 26.11.2001. The counsel for the petitioner in the court below could have inquired about the passing of the tender on the aforesaid dates and also about passing of the order and for depositing the decretal amount before the court below. In view of the matter, the first contention of the counsel for the petitioner has no force.

12. The second contention of the counsel for the petitioner is that, application under Section 5 of the Limitation Act for condonation of delay has not been considered. This appears to be incorrect on the face of record. The revisional court has considered this aspect of the matter and has held that the application under Section 5 of the Limitation Act was filed by the petitioner after much delay. The court below has found that the cause shown by the petitioner in application under Section 5 of the Limitation Act does not reveal sufficient cause. The condonation of delay is discretionary and where there is discretion of a Court it has to be exercised judiciously. I find from the impugned order that the application 34Ga was submitted by the petitioner after delay of about 4 years. The approach of the court below is judicious and it has rightly held that sufficient cause has not been shown for the delay in filing application under Section 5 of the Limitation Act.

13. For the reasons stated above, the writ petition is dismissed. No order as to cost.