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

Smt. Raphia Vs. State of U.P. and ors.

Smt. Raphia Vs. State of U.P. and ors.

SooperKanoon Citation : sooperkanoon.com/495409

Court : Allahabad

Decided On : Nov-16-2005

Reported in : 2006(2)AWC1226

Judge : S.N. Srivastava, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 148A, 148A(1) and 148A(5); Allahabad High Court Rules, 1952 - Rule 5

Appeal No. : C.M.W.P. No. 70003 of 2005

Appellant : Smt. Raphia

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : B.R. Sharma, Adv.

Judgement :

S.N. Srivastava, J.

1. When the case was taken, this was brought to the notice of the Court that the caveat was reported by the Stamp Reporter when the writ petition was presented for reporting before him, but subsequently he scored out the same.

2. Learned Counsel for the petitioner stated that caveat was wrongly reported by the Stamp Reporter, but on his objection to the effect that caveat remains effective for only 90 days, the report was scored out and another report to the effect that no caveat has been filed was made by the Stamp Reporter. Learned Counsel for the petitioner referred Section 148A(5) of the C.P.C. in support of his contention.

3. Learned Counsel for caveator, in reply, urged that provisions of C.P.C. will not be applicable with regard to lodging caveat in writ petitions. The only provision under which caveat could be lodged in writ petitions is Rule 5 of Chapter XXII of the Allahabad High Court Rules, 1952. He further urged that caveat was rightly reported by the Stamp Reporter, but the report was wrongly and illegally scored out by Stamp Reporter at the instance of petitioner's counsel. He also urged that petitioner is entitled to be heard in opposition at the initial stage.

4. Considered arguments of learned Counsel for the parties and relevant rules on the point.

5. Section 148A of the C.P.C. is being reproduced below for ready reference:

148A. Right to lodge a caveat.-(1) Where an application is expected to be made, or has been made, in a suit or proceeding instituted, or about to be instituted, in a Court, any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.

(2) Where a caveat has been lodged under Sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been, or is expected to be, made under Sub-section (1).

(3) Where, after a caveat has been lodged under Sub-section (1), any application is filed in any suit or proceeding, the Court, shall serve a notice of the application on the caveator.

(4) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which has

been or may be, filed by him in support of the application.

(5) Where a caveat has been lodged under Sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in Sub-section (1) has been made before the expiry of the said period.

6. From a plain reading of Section 148A of the C.P.C. it is clear that this provision is applicable in a suit or proceeding instituted or about to be instituted in a Court. Section 148A of the C.P.C. will be applicable to the suits or proceedings governed by the C.P.C. and not in the other proceedings not governed by the C.P.C.

7. I have also carefully gone through Rule 5 of Chapter XXII of the Allahabad High Court Rules, 1952, which is being reproduced below:

Lodging of caveat.-(1) Where an application is expected to be made or has been made, any person claiming the right to oppose such an application, may, either personally or through his counsel, lodge a caveat in the Court in respect thereof.

(2) The caveator shall serve a notice of the caveat by registered post, acknowledgment due, on the person by whom the application is expected to be made and submit proof of service in Court.

(3) After the caveat has been lodged and the notice thereof has been served on the applicant's counsel, the applicant shall forthwith furnish to the caveator or his counsel, at the caveator's expense, with a copy of the application as well as any miscellaneous application made therein for interim relief.

(4) Where a caveat has been lodged and notice thereof has been served the applicant shall when presenting the application in Court, furnish proof of having given prior notice in writing to the caveator's counsel of the date on which the application is proposed to be presented.

8. From perusal of the provisions of Rule 5 of Chapter XXII of the Allahabad High Court Rules, 1952, this Court is of the considered view that once a caveat is filed in a writ petition or other proceedings not governed by the C.P.C, the Stamp

Reporter is bound to make a report about filing of the caveat. As Section 148A of the C.P.C. will not be applicable to the writ petitions, the Stamp Reporter is not competent to ignore the caveat filed in writ petitions on the ground that 90 days have expired.

9. Accordingly, I hold that Stamp Reporter on the objection raised by petitioner's counsel wrongly scored out the report which was rightly made earlier about filing of the caveat by the caveator's counsel.

10. Stamp Reporter shall take care of this in future while reporting caveat filed in the writ petitions.

11. Registrar General of the Court is directed to take appropriate steps for compliance of this order.

12. As prayed, put up day after tomorrow for admission.

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