

Court No. - 36

Case :- MATTERS UNDER ARTICLE 227 No. - 1109 of 2019

Petitioner :- Smt. Sumitra Devi

Respondent :- Station House Officer And Another

Counsel for Petitioner :- Ghanshyam Chaubey

Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Sunita Agarwal,J.

Prayer made in the present petition is to issue a direction to the trial court to decide pending application 25C2 in Original Suit No.288 of 2013 (Smt.Sumitra Devi vs. Smt. Nazmi Zubair). With the aid of the order sheet of the said suit, brought by means of supplementary affidavit, it is sought to be submitted by learned counsel for the petitioner that the application dated 29.11.2017 moved by the petitioner for grant of temporary injunction could not be taken up on account of the fact that the court was vacant for a longtime.

This submission of learned counsel for the petitioner is not substantiated from the perusal of record of the order sheet, in as much as, by order dated 4.7.2015, while deciding the issue no.3 the trial court while holding that the suit was under valued, had directed the plaintiff to pay requisite court fee. It is further evident that an application 22 C was moved by the petitioner for modification of the order dated 4.7.2015 with an assertion that as per his own assessment, the valuation of the suit property was Rs.1,00,000/- and the plaintiff wanted to amend the said valuation, accordingly and pay requisite court fee. The application 22 Ka was allowed at the cost of Rs.200/- and the plaintiff was directed to pay the court fee, accordingly.

It further appears that the court fee was paid by the petitioner in 2019, thus, the suit became competent only on 3.1.2019 on the payment of the requisite court fee. Thereafter, the matter has been transferred to the court of Additional Civil Judge,(Junior Division)/F.T.C. vide order dated 31.1.2019 passed by District Judge. On 7.2.2019, the trial court had fixed 8.2.2019 noticing the transfer order dated 31.1.2019. Thereafter, on two dates, the advocates were abstaining from judicial work and since the presiding officer had proceeded on leave, 26.3.2019 was fixed for disposal.

It is, not, clear from the record that after transfer of the present suit in the court of Civil Judge (Junior Division) F.T.C. pursuant to the order of the District Judge dated 31.1.2019, whether fresh notices have yet not been issued to the defendants.

In the said scenario, no direction can be given. In case of long leave of the Presiding Officer, it is always open for the petitioner to move an appropriate application before the District Judge, Allahabad, who may do the needful in accordance with law.

In view of the above observations, the present petition is dismissed.

Order Date :- 15.3.2019/Harshita