
Mohd. Saeed Alias Kallo Keelwale Vs Smt. Salma Begum and 5 Others

**Civil Misc. Delay Condonation Application No. 157681 of 2016 In S.C.C. Revision
Defective No. 106 of 2016**

Court: ALLAHABAD HIGH COURT

Date of Decision: May 16, 2016

Acts Referred:

Provincial Small Cause Courts Act, 1887 - Section 23(1)

Citation: (2016) 2 ARC 624 : (2016) 2 ARC 400

Hon'ble Judges: Manoj Misra, J.

Bench: Single Bench

Advocate: Shubham Agarwal, Mohammad Ali Ausaf, Advocates, for the Appellant; Rajesh Srivastava, Advocate, for the Respondent

Final Decision: Disposed Off

Judgement

Manoj Misra, J.â€”Heard learned counsel for the applicant and Sri Rajesh Srivastava for the caveator-respondents.

2. By this delay condonation application, the applicant has prayed for condonation of 46 days delay in filing the S.C.C. revision under Section 25

of Provincial Small Cause Courts Act (hereinafter referred to as the Act) against the order dated 19.02.2016 passed by Additional District Judge,

Court No.16, Kanpur Nagar, in SCC Suit No.61 of 2011.

3. The contention of learned counsel for the revisionist is that the office has reported the revision to be beyond time by 45 days by taking the

period of limitation for filing the revision as 30 days though the period of limitation for filing revision before the High Court is 90 days. It has been

submitted that whether period of limitation to file revision before the High Court is 30 days or 90 days, when a revision is preferred under section

25 of the Act, is under consideration by a Larger Bench of this Court. It has been submitted that in the case of Uday Bhan Gupta the Apex Court

without conclusively deciding the issue has observed that limitation period for filing a revision before the High Court under Section 25 of the Act

would be 90 days. It has been submitted that in view of conflicting views there has been some delay in filing the revision which may be condoned.

4. Having considered the submissions and the cause shown in the affidavit filed in support of the delay condonation application, this court is of the

view that the cause shown to condone the delay is good and sufficient. The delay condonation application is allowed. The delay in filing the revision

is condoned. The revision will be assigned regular number unless there is any other defect in the revision.

S.C.C. Revision Defective No. - 106 of 2016 Manoj Misra, J.â€”Heard learned counsel for the applicant and Sri Rajesh Srivastava for the

caveator-respondents.

6. The present revision has been filed against an order dated 19.02.2016 passed by Additional District Judge, Court No.16, Kanpur Nagar, in

SCC Suit No. 61 of 2011 by which the application No. 81-Ga of the revisionist, who is a defendant in the said suit, to return the plaint under

Section 23(1) of the Provincial Small Cause Courts Act, 1887 (hereinafter referred to as the Act), has been rejected on the ground that from the

material brought on record i.e. rent agreement, sale deed, etc., prima facie, there appears to be landlord tenant relationship between the plaintiff

and the defendant which is affirmed by an unconditional deposit made under sub-section (4) of Section 20 of U.P. Act No.13 of 1972 therefore it

would not be appropriate for the court to return the plaint under Section 23(1) of the Act.

7. The submission of the learned counsel for the applicant is that the title of the plaintiff to the suit property had been denied by claiming that the

sale deed in favour of the plaintiff was void because the property of which the sale deed was executed was a Waqf property. It has been submitted

that since complex questions relating to the title of the property in suit was involved, the court below ought to have returned the plaint under

Section 23(1) of the Act for adjudication by a competent civil court having jurisdiction to decide questions relating to title of immovable property.

8. The learned counsel for the plaintiff-respondent has submitted that the plaint has been instituted on the basis of landlord tenant relationship and

there are rent receipts apart from rent agreement on record in support of the claim that the defendant was tenant of the plaintiff. It has further been

submitted that since, as of now, the evidence of the parties have not yet been led therefore it would not be appropriate for this court or even the

lower court to express any opinion whether the plaint ought to be returned under Section 23(1) of the Act or not because while deciding the

question of landlord tenant relationship, it is well settled, a Court of Small Causes can always look into question of title incidentally. It has been

submitted that since evidence is yet to be led by either side, it would be premature for the court to come to a conclusion that complex questions

relating to title of immovable property are involved which require adjudication by a competent civil court having jurisdiction to decide questions

relating to title of immovable property. It has been submitted that the court below while rejecting the application of the revisionist has recorded only

prima facie satisfaction that there is landlord tenant relationship between the plaintiff and the defendant and this finding is subject to the evidence

which is to be led during the course of trial.

9. I have considered the submissions of the learned counsel for the parties.

10. It is well settled that while considering a plea to return the plaint to a Court of competent jurisdiction, in exercise of power under Section 23 of

the Provincial Small Causes Court Act, the JSCC Court is vested with a discretion to return or not to return the same and it is not obligatory on the

Court to return the plaint once a question of title is raised by the tenant because such questions of title can be incidentally gone into while deciding

the question of landlord-tenant relationship between the plaintiff and defendant. In Shamim Akhtar v. Iqbal Ahmad and another, reported in

(2000) 8 SCC 123, the Apex Court took the view that the power vested, under Section 23(1) of the Provincial Small Causes Court Act, in the

Court is discretionary. It was observed that the question of title of the plaintiff to the suit house could be considered by the Small Causes Court in

the proceedings as an incidental question and final determination of the title could be left for decision of the competent Court. Following the said

decision in the case of Ram Sewak v. Pramod Kumar, 2011 (84) ALR 634, this Court approved examination by the JSCC Court of a question

relating to valid execution of Will by the erstwhile landlord in favour of the plaintiff by holding that such questions could be incidentally gone into

while deciding the question of landlord-tenant relationship between the plaintiff and defendant. It is only when complicated questions relating to title

are involved then the court is under an obligation to return the plaint.

11. In the instant case, it is admitted to the counsel for the parties that till date no evidence has been led in the suit by either party, therefore, the

finding in respect of landlord tenant relationship that has been returned by the court below is on the basis of prima facie assessment drawn from the

pleadings and materials which are still to be proved by evidence. Such finding, therefore, is not conclusive and the court below can always examine

the matter to return the plaint or not, afresh, on the basis of the evidence led by the parties during the course of trial. Accordingly, this Court does

not find it to be a fit case for interference, at this stage. The revision is thus dismissed with observation that it would be open to the applicant to

raise a fresh plea with regards to return of plaint after evidence is led by the parties.