



2026:AHC:64650

HIGH COURT OF JUDICATURE AT ALLAHABAD

CONTEMPT APPLICATION (CIVIL) No. - 1925 of 2026

Rajendra Prasad

.....Applicant(s)

Versus

Anuj Mehara, Sub Divisional Magistrate

.....Opposite
Party(s)

Counsel for Applicant(s) : Amit Singh Yadav, Gautam Kumar
Counsel for Opposite Party(s) :

Court No. - 9

HON'BLE ROHIT RANJAN AGARWAL, J.

1. The writ Court, on 16.12.2024, while disposing of Writ-B No.30424 of 2012 had passed the following order:-

"1. Heard Sri Rajesh Kumar Singh and Sri Ram Krishna Mishra, learned advocates for petitioner and Sri Sujeet Kumar Singh, learned counsel for respondents.

2. Learned advocates for petitioner submit that lis between predecessors of parties has been settled up to Supreme Court in favour of predecessor of petitioner, therefore, any subsequent suit filed by predecessor of respondents herein would not be maintainable.

3. Learned advocates further submit that a subsequent suit filed by respondents was rejected vide order dated 23.05.2011 mainly on a ground that certain procedure was not followed.

4. Learned advocates further submit that first appeal filed by plaintiffs/respondents was allowed vide order dated 22.02.2012 and matter was remitted back to trial Court with an observation either to permit the plaintiffs/respondents to cure the defects or, if any application is filed to withdraw the suit with liberty to file a fresh be considered in accordance with law.

5. Learned advocates further submit that second appeal was filed by petitioner which was dismissed at the stage of admission vide order dated 06.06.2012.

6. *Learned advocates for petitioner submit that petitioner has raised all legal issues before Board of Revenue that suit was barred by res-judicata, however, same were not considered.*

7. *Learned counsel for respondents submits that stage to consider whether suit is barred by res-judicata has still not arrived since suit has been remitted back only on issue either to cure the defects by respondents or to withdraw the suit.*

8. *I have considered above submissions and perused the record.*

9. *The Supreme Court in Satyanath and another vs. Sarojmani, (2022) 7 SCC 644 has held in paragraph 21 in regard to preliminary issue that:-*

"21. The provisions of Order 14 Rule 2 are part of the procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the lis and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended Order 14 Rule 2. If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the court or the bar to the suit is made out, the court may decide such issues with the sole objective for the expeditious decision. Thus, if the court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext."

10. *The First Appellate Court has remitted the matter to trial Court with a direction either to permit plaintiffs to cure the defect or permit the plaintiffs to withdraw the suit to file a fresh suit in terms of Order VII Rule 13 CPC. The challenge to such liberty at behest of petitioner/defendants is not legally sustainable since suit is still not heard on merit.*

11. *At this stage, learned counsel for respondents submits that*

respondents are contemplating to file a fresh suit.

12. In aforesaid circumstances, this writ petition is disposed of with an observation that trial Court will take a decision either to permit the plaintiffs to cure defects of suit or grant permission to file a fresh suit in terms of Order VII Rule 13 CPC, as the case may be. The trial Court may take a decision expeditiously, preferably within 4 weeks from today after hearing petitioner herein/defendant therein also, if necessary."

2. In pursuance thereof, the applicant has moved an application on 10.01.2025 before the competent Court for complying the order of the writ Court.

3. From perusal of the application moved by the applicant, it transpires that the applicant had not made any request for getting the defect cured of the suit which was dismissed or prayed for filing afresh.

4. The trial Court on 20.01.2026 dismissed the suit on the ground that the various provisions of CPC were not complied with, and the applicant has not taken steps for service of notice upon the opposite party.

5. After hearing counsel for the applicant and perusing the material on record, a fresh liberty is granted to the applicant to move a proper application before the trial Court for either getting the defect cured in the suit, or filing a fresh suit as required by the writ Court.

6. In case, the said application is moved within one month from today, the trial Court shall comply the order dated 16.12.2024 and decide the application moved by the applicant within next one month.

7. With the aforesaid observations, present contempt application stands disposed of.

(Rohit Ranjan Agarwal,J.)

March 28, 2026
SK Goswami