



2026:AHC-LKO:22074

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

MATTERS UNDER ARTICLE 227 No. - 1129 of 2026

Suresh Kumar

.....Petitioner(s)

Versus

Hanuman Prasad

.....Respondent(s)

Counsel for Petitioner(s)	:	Umesh Chandra
Counsel for Respondent(s)	:	Sudhakar Shukla

Court No. - 5

HON'BLE ALOK MATHUR, J.

1. Heard Shri Umesh Chandra, learned counsel for the petitioner as well as Shri Vijay Shankar Pandey, who has filed Vakalatnama on behalf of respondent, which is taken on record along with Sudhakar Shukla, Advocate.

2. The dispute in the present case has arisen from the suit being filed by the opposite party against the petitioner, for Permanent Injunction and Enactment, in the court of Civil Judge (S.D.), Gonda. The said Suit was registered as Suit No. 349 of 2025. In the said suit proceedings notices were issued to the opposite party, in pursuance of which the petitioner had appeared and filed his Vakalatnama on 30.03.2016. Pursuant to filing of the Vakalatnama, subsequently he did not participate in the proceedings and accordingly the suit was decreed exparte, by means of the judgement and order dated 14.03.2022. The trial court decided the suit on the basis of plaint as well as evidence adduced by the opposite party. Before the trial court the opposite party had adduced sufficient material indicating that the disputed property was an ancestral property and the petitioner being a pattidar, was permitted to enter in the premises in July, 2012, wherein he has assured the plaintiff to vacate the premises as soon as his house, which is under construction, is completed. The plaintiff apart from examining himself, had adduced the evidence of Jamuna and Avadhesh Kumar, who appeared as P.W. 2 and P.W.3. It is in the aforesaid circumstance, the trial court concluded that the petitioner was tenant in the said premises, which has been given on rent of which,

the opposite party was the owner. It is further recorded that in 2015 when a request was made by the petitioner to vacate the said premises, he refused to vacate the said premises and instead of that, he started demolishing and raising a fresh construction and also asserted his right as an owner of the said property and accordingly, the suit was filed for eviction & perpetual injunction which was decreed on 14.03.2022, directing the petitioner to vacate the said premises and also restraining him from interfering in the possession of the opposite party, in any manner whatsoever. That an application for execution was also filed to execute the judgment and order of the trial court dated 14.03.2022, which was numbered as Execution No. 1/2022, which also concluded on 17.02.2025.

3. It is a case of the petitioner that he was not aware of the judgement and order of the trial court, dated 14.03.2022 and it is only when the execution proceeding was commenced, he came to know about the judgment of the trial court and accordingly moved an application for setting aside the exparte judgement. The application for setting aside the exparte judgement, was preferred by the petitioner, on 31.05.2025 along with the application for condonation of delay. It was asserted on behalf of the petitioner that he had executed a Vakalatnama by engaging a counsel to execute the proceedings, on 30.03.2016 and thereafter, went to do his job at Gujarat and subsequently, his wife fell ill and subsequently he came back for wedding of his daughter and it is only after that, he filed an application for setting aside the exparte order. The trial court allowed the application for condonation of delay, but rejected his application under Order IX Rule XIII C.P.C. on merits, by means of judgment and order dated 30.05.2025. The trial court considering the application of the petitioner under Order IX Rule XIII on merits, was of the view that the petitioner was fully aware of the suit proceedings, in as much as, he engaged a counsel subsequently, to which due to Corona Pandemic, he could not prosecute the said case, but subsequently the suit proceeding proceeded, in which he did not participate and he has stated that he had fallen ill and subsequently on account of the wedding of his daughter, could not participate in the suit proceeding. The trial court was of the considered view that with regard to the grounds taken by the petitioner,

with regard to the illness he had not filed any documents indicting his illness and consequently the grounds taken by him, could not be believed and accordingly, the court was of a considered view that no sufficient cause was shown, by the petitioner to entertain the application under Order IX Rule XIII C.P.C. and in absence of any satisfactory explanation, such an application could not be entertained and accordingly, rejected the same. Against the order dated 30.09.2025, the petitioner had preferred an appeal before the District Judge, Gonda. The District Judge, Gonda also had considered the facts, as submitted by the petitioner, and found that he has not submitted any material with regard to his illness about from which, it was admitted by the petitioner that he was aware of the suit proceedings and no cogent reason was found for not participating the same and consequently, dismissed the appeal, by means of the order dated 09.01.2026. In the present writ petition, the petitioner has challenged the order dated 09.01.2026 as well as the order dated 30.09.2025.

4. The counsel for the petitioner has reiterated the facts as narrated by the court below and submitted that he had executed a Vakalatnama in favour of a counsel to prosecute the suit proceedings on 30.03.2016 and subsequently the proceedings were proceeded exparte, against the petitioner, finally concluding the judgment and order of the trial court, dated 14.03.2022. He has submitted that the counsel never informed him about the case proceedings of the trial court and consequently he prayed for setting aside of the aforesaid orders and also permitting him given opportunity for filing written statement, before the trial court and an opportunity before any decision is taken, with regard to the suit instituted by the petitioner.

5. In support of his submission he has relied upon a judgment of the Supreme Court in the case of **Dwarika Prasad Vs. Prithvi Raj Singh**. The judgment delivered by the Supreme Court on 20.12.2024 in Civil Appeal No. 14830 of 2024 (arising out of SLP (C) No. 11259 of 2022). In the said judgement it has been submitted that in the similar circumstances when the opposite party had given Vakalatnama and subsequently the proceedings were concluded exparte, the Supreme Court was of the view that merely on account of counsel's failure to

appear in court, the client could not be punished and in the aforesaid circumstances, the Hon'ble Supreme Court has set aside the exparte decree and directed the trial court to proceed afresh, after giving opportunity of hearing to the parties.

6. Counsel for the opposite party has vehemently opposed the writ petition. He has submitted that the facts of the present case, are clearly distinguishable from the facts, which have been dealt with by the Supreme Court, in the case of Dwarika Prasad. It has been submitted that in the present case, it is a case of the opposite party that the petitioner had entered into a disputed property in the capacity of a tenant but subsequently when he was asked to vacate, the disputed property, he has ascertained his right as an owner of the disputed property, necessitating filing of the suit for eviction and permanent injunction by the opposite party. He has submitted that in the suit proceedings the petitioner did not participate and even the reasons given by him for setting aside the exparte order has not been made out by the trial court. It has been submitted that in the suit proceedings number of opportunities were given to the petitioner to cross examine the witnesses but the petitioner neither did he file written statement nor any cross examine to any of the parties.

7. It is in the aforesaid circumstances it is submitted that the benefit of the judgement of Dwarika Prasad will not be available to the petitioner. Apart from the above, he has submitted that in the case of Dwarika Prasad, the delay was of merely 05 months, which has been condoned, by the Supreme Court, but in the present case the delay of over three years and accordingly the facts of the present case cannot be tested on the anvil on the judgment of the Supreme Court in the case of Dwarika Prasad.

8. I have heard rival contentions of the parties and perused the record. That suit for permanent injunction and eviction was filed, by the opposite party, against the petitioner. The petitioner according to opposite party, entered into the disputed property in the capacity of a tenant in July, 2012. The reason for creation of tenancy in favour of the petitioner, was the fact that the petitioner was a pattidar of the opposite party, and requested that he was constructing a house nearby and required tenanted property for a short time, till construction of the house. Subsequently it is

alleged that the petitioner started demolishing a part of the said house and also raising fresh constructions and started ascertaining his right as a owner of the disputed property.

9. It is in the aforesaid circumstances, that the suit was filed against him for permanent injunction and eviction. He had put in appearance and a Vakalatnama was filed. Despite participating in the suit proceedings initially the petitioner did not participate subsequently, nor did he file the written statement. He did not contest the suit proceeding, nor he file a written statement. No satisfactory explanation is forthcoming as to why by filing of Vakalatnama a written statement could not be filed by the petitioner opposing the allegation of the plaint. Even till the conclusion of suit proceeding no written statement was not filed nor was there any participation by the petitioner in the suit proceeding. Undoubtedly once Vakalatnama has been executed the responsibility vests upon the counsel for the petitioner to appear and cross examine the witnesses. After Vakalatnama he has no role to participate any further in the litigation. The litigant is suppose to be vigilant and fully aware of the suit proceeding and suppose to participate in the trial court proceedings, and appear on the date fixed for evidence. In the present case, the trial court has returned the finding that the several opportunities were given to the petitioner to cross examine, but no such opportunity was taken by him and it is for the aforesaid circumstances, the proceedings concluded exparte. The delay of three years, which have been sought to be explained by the petitioner, has also not been found acceptable, in as much as, no medical documents were filed by the petitioner in support of his appliation for condonation of delay to indicate the disease which was suffered by him. It would be relevant to determine the fact, as to whether the disease was of such nature, so as to prevent the petitioner from proceeding to Gonda to participate in the suit proceedings.

10. Accordingly, it is in the aforesaid circumstances, disclosure of disease was extremely relevant, which has not been done by the petitioner and the trial court as well as the appellate court has taken note of the aforesaid fact that no document was filed by the petitioner, with regard to his disease and accordingly, has rejected his contentions.

11. This Court also does not find any material adduced by the petitioner, indicating the disease contacted by him, during the suit proceedings and accordingly such a ground raised by the petitioner, does not inspire confidence so as to accept his vague plea. The delay could have been liable to be condoned in case the petitioner had given satisfactory explanation for the same, in the present I further find that no satisfactory explanation given by the petitioner, for not coming to Gonda and participated in the suit proceedings and he has merely stated that he had gone to Gujarat for the purposes his work.

12. Accordingly, this Court also do not find any material, by which it can be said that the delay caused by the factors, beyond the control of the petitioner and satisfactory explanation given by the petitioner.

13. For the aforesaid reason, I do not find any interference in the appellate order dated 09.012026 as well as judgment and order of the Civil Judge, dated 30.09.2025. The writ petition is devoid of merits and is accordingly, dismissed.

(Alok Mathur,J.)

March 30, 2026

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